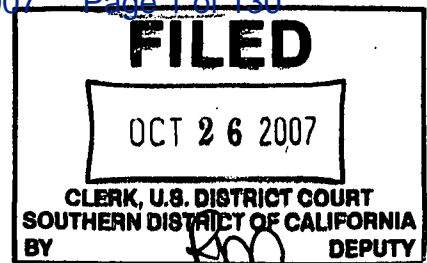


UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wieking
Clerk

October 24, 2007



General Court Number
415.522.2000

Southern District of California
940 Front Street
San Diego, CA 92101

'07CV 2062 H JMA

RE: CV 07-03667 MMC ANTHONY ALVAREZ-v-VICTOR ALMAGER

Dear Clerk,

Pursuant to an order transferring the above captioned case to your court, transmitted
are:

- ☒ Certified copy of docket entries.
- ☒ Certified copy of Transferral Order.
- ☒ Original case file documents.
- ☒ Please access the electronic case file for additional pleadings you may need. See the attached instructions for details.

herewith	2254	1983
FILING FEE PAID		
Yes	No <input checked="" type="checkbox"/>	
HFP MOTION FILED		
Yes	No <input checked="" type="checkbox"/>	
COPIES SENT TO		
Court	ProSe	

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,
RICHARD W. WIEKING, Clerk

Simone Voltz

by: Simone Voltz
Case Systems Administrator

Enclosures
Copies to counsel of record

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY ALVAREZ,

Petitioner,

vs.

VICTOR M. ALMAGER, Warden,

Respondent.

C 07-3667 MMC(PR)

ORDER OF TRANSFER

(Docket Nos. 2, 4 & 5)

On July 17, 2007, petitioner, a California prisoner incarcerated at Centinela State Prison and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges a conviction obtained in the Superior Court of San Diego County.

Pursuant to 28 U.S.C. § 2241(d), venue for a habeas action is proper in either the district of confinement or the district of conviction. See 28 U.S.C. § 2241(d). In the instant action, neither the district of confinement nor the district of conviction is located within the venue of the Northern District of California. Centinela State Prison, where petitioner is confined, is in Imperial County, which is located within the venue of the Southern District of California. See 28 U.S.C. § 84(d). San Diego County, where petitioner was convicted, also is located within the venue of the Southern District of California. See id.

When venue is improper, the district court has the discretion to either dismiss the

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Northern District of California.

Date Filed: 10-23-07

RICHARD W. WIEKING, Clerk


[Signature] Deputy Clerk

1 action or transfer it "in the interest of justice." See 28 U.S.C. § 1406(a). Accordingly, in the
2 interest of justice, the above-titled action is hereby TRANSFERRED to the United States
3 District Court for the Southern District of California. In light of the transfer, this Court will
4 defer to the Southern District with respect to petitioner's in forma pauperis application.

5 The Clerk shall close the file and terminate Docket Nos. 2, 4 and 5 on this Court's
6 docket.

7 IT IS SO ORDERED.

8 DATED: October 23, 2007

9 
10 MAXINE M. CHESNEY
11 United States District Judge
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APPEAL, CLOSED, E-Filing, HABEAS, ProSe, TRANSF

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:07-cv-03667-MMC
Internal Use Only

Alvarez v. Almager et al
Assigned to: Hon. Maxine M. Chesney
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 07/17/2007
Date Terminated: 10/23/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Anthony Alvarez**


represented by **Anthony Alvarez**
Centinela State Prison C-3-111-L
V-12145 C-3-111-L
P.O. Box 921
Imperial, CA 92251
PRO SE

V.

Respondent**Victor M. Almager****Respondent****Bill Lockyer**
ESQ.

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.
ATTEST:

RICHARD W. WIEKING
Clerk, U.S. District Court
Northern District of California

By  Deputy Clerk
Date 10-24-07

Date Filed	#	Docket Text
07/17/2007	1	PETITION for Writ of Habeas Corpus : Case Transferred from the United States District Court Southern District of California; their case number 3:06-2112-WQH (NO PROCESS); (IFP PENDING). Filed by Anthony Alvarez. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007	2	MOTION for Leave to Proceed in forma pauperis filed by Anthony Alvarez. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007	3	Letter from Clerk requesting a signed and completed IFP application or filing fee of \$5.00. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007	4	NOTICE OF APPEAL re [1] Petition: re Supreme Courts Order by Anthony Alvarez. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)

		07/18/2007)
07/17/2007	4	MOTION for Certificate of Appealability re [1] Petition: re Supreme Court's Order filed by Anthony Alvarez. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007		CASE DESIGNATED for Electronic Filing. (aaa, Court Staff) (Filed on 7/17/2007) (Entered: 07/18/2007)
08/10/2007	5	MOTION for Leave to Proceed in forma pauperis filed by Anthony Alvarez. (aaa, Court Staff) (Filed on 8/10/2007) (Entered: 08/13/2007)
08/15/2007	6	Letter dated 08/11/07: from Anthony Alvarez re Copies for Certificate of Appealability. (aaa, Court Staff) (Filed on 8/15/2007) (Entered: 08/16/2007)
10/23/2007	7	ORDER OF TRANSFER. Signed by Judge Maxine M. Chesney on October 23, 2007. (mmcsec, COURT STAFF) (Filed on 10/23/2007) (Entered: 10/23/2007)

Mr. ANTHONY ALVAREZ,

V-12145), C-Facility, C-3-111-L,

CENTINELA STATE PRISON,

Post Office Box-921,

Imperial, California

#92251)

FILED

JUL 17 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AM

* ORIGINAL * UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT FOR CALIFORNIA.

ANTHONY ALVAREZ,

Petitioner,

VS.

VICTOR M. ALMAGER, Warden,

CENTINELA-Warden, (CSP),

Respondent.)

Case No.

Case No. 06-212-WQH.)

NOTICE OF APPEAL.

WITH

REQUEST FOR CERTIFICATE
OF APPEALABILITY (COA.)

NOTICE:- I S Hereby given Petitioner ANTHONY ALVAREZ,
(V-12145) is Appealing To Our 9th Circuit, United States
COURT OF APPEALS; And To This United States District
COURT FOR 'Certificate OF Appealability.' (COA.)

From Court Orders of Chief Justice, RONALD M. GEORGE,
Calif. SUPREME COURT "STONEWALLING THE LAWS,"
Per Se, covering-up Facts of "A Counterfeit Conviction."

Based Upon 40 & 38-year Old Priors Alleging MisUse &
Abuse of The LAWS. (Citations). Moreover, Against U.S. Magistrate
JAN M. ALDER, (Refusing To Acknowledge, nor, To Correctly
Adjudicate our Constitutional Merits in 150 Page Habeas Corpus.)!!

(1)

See P. 2.)

The "Spirit of The LAW" is Superlative
in THE LAW — NOT ANY Procedural LAW.

The Spirit of The LAW, Defines The True Purpose
And True Function of THE LAW & IS SUPERIOR
TO ALL Arbitrary Prison Regulations in California's
Prisons (CDC) DEPARTMENT OF CORRECTIONS.

July 7TH, 2007

H Anthony Alvarez

V-12145, C-3-111 (CESP.)

In Pro Per, ... &

(Amicus — Curiae.)

Page 7, Continued.):- ORIGINAL July 7th, 2007.)

While covering-up ALL Constitutional Violations of The State Courts. Allegation: This Magistrate Erroneously Believing Her Duty is to be "Politically-Correct" — in short, acting in COLLUSION) Joining Calif. Court(s) — Whom live via, "Politicizing The Law", ipso facto! Are i.e., COURTS OF SHAME — See, (Insert page A.) (later). PLEASE TAKE JUDICIAL NOTICE:- !

* Petitioner ALVAREZ (Disqualified Any U.S. Magistrate in Southern District Court) (Sept. 26, 2006) Due to LEGAL Facts:- He CANNOT RECEIVE ANY EQUITY — JURIS PRUDENCE There!! & Disqualified Jan. 2007!

They Remain Mentally Blind To ALL of our Substantial Merits, & are Federally Guaranteed Constitutional Violations. (Being Dis Regarded.) !

* E.g., (Wingo V. Wedding, 418 U.S. 461, at 468, 41 L.Ed. 2d 879, at 885, 94 S.Ct. 2842.) (1974.)

The Southern District Court Believes They Can (Dis Regard) (Merits-Principles) of This Beautiful Supreme Courts Decision??

Whereas, WE are Diligently Seeking Required & Genuine EQUITY JURIS PRUDENCE — Due Process, "Equal Protection of The LAWS." (Citations Omitted.)

* WE Have Herein, such 'EXTRA — EXTRA-ORDINARY' Instances And Circumstances' — "That Requires Dis Regards of Accustomed Procedure." His Habeas Corpus must

Continued):-

.....Be Adjudicated Via, U.S. District Judge
 NOT ANY Prejudicial, Mis Guided U.S. Magistrate.
 (Wingo V. Wedding, supra.) "Not Be Held in Subord-
 -ination To Proceedings (Past.): "Which "Opens The
 Doors of Inquiry." Whether, They have been
 More, Than An Empty Shell." (Id. 346.)"
 cited in, (Darn V. Burford, supra, page 218.)"
 The Clear Message Is California, Does NOT
 Guarantee Rights, To Fair Trials, Fair Appeals,
 nor, Habeas Corpus Rights. (Citations later)."
 (Wingo V. Wedding, supra, 418 U.S. at 468.) (1974)."

* At any rate, WE DO Have Constitutional Rights
 To Seek & Receive Constitutional Relief From Any
 U.S. District Court - Esp., When one U.S. District
 Court Has Chosen To Cover-Up! California Court(s)
 who Has Chosen ("STONEWALLING THE LAWS" and
 joining into, "Political Correctness" NOT
 — Serving Our American Systems, LAWS!!

* There is No Fundamental - Fairness', No —
 Corrective Process —, in U.S. Magistrate J.M. ALDERS —
 Opinion - Really. The Magistrate, is acting in (COLLUSION)
 with A System of No Genuine Checks & Balances!!

In short, The U.S. Magistrate is Trying To Be
 "Politically - Correct." In so Doing Magistrate ALDERS,
 is i.e., Acting AS A 17th Century COURT OF SHAME!
 (Cont.) See p. 3)

Page 3. Continued):- ~~ORIGINAL~~ July 7TH 2007.)

(Truth Be Told):- What We Have is "A One-Sided —
— Trial" — No Reliable Material Evidence; No Property;
Nor, any Finger Prints in First Burglary. — Only —
Unreliable Hearsay — Testimony (one witness) No rigorous
* * * Adequate Cross-Examination — Resulting in
A 60-Year Disproportionate Sentence. As for The —
Strickland Prejudicial ERRORS. Allegations (If) The...
Writer Here, Assisting The Petitioner was i.e., Defending
Mr. ALVAREZ at Trial & showing JURORS His Side
* of The Case — No Reasonable, Rational minded Jury
would Have convicted Him Upon (Prosecutions)...
.....Manufactured — Evidence! NO REAL EVIDENCE...!
Allegations U.S. Magistrate Has No Conscience of:-
EQUITY — JURISPRUDENCE!
"EQUITY REGARDS AS BEING DONE
WHAT OUGHT TO BE DONE."
"2ND POMEROY, EQUITY — JURISPRUDENCE."
Which is, 'Diametrically — Opposite', This Attitude
of Being "Politically Correct," By U.S. Magistrate (sic)!
E.g., Trying To Use 38 & 40 yr. OLD Priors as if —
They just Happened Last Year, We pled Cause &
Extreme Prejudice. Petitioner Claims it's Inherently
EVIL, moreover, EVIL perpetuates EVIL —

(3)

See (OVER)

Continued.):-

... CANNOT Perpetuate ANY TRUTH, Nor, ANY American JUSTICE." (SIC)!

See, His Attached H/C Ground Four pp. 6, 7, & 8.)

It is A Pity U.S. Magistrate ALDER:-

Is Unable To Discern (ALL) The Major Issues Are - Resulting from Total Lack of "A Fundamental Fair Trial" - And it's Resulting "Collateral - Consequences" - Needs Mandatory Hearings -

Against (Malum In Se' Conduct.).

ALL The Federal Legal Authorities Cited:-

Proclaim "HEARINGS ARE MANDATORY," -

- IF JUSTICE AND TRUTH ARE TO Prevail!

(Capps V. Sullivan, 91 F.2d 260, at 262-263.) (10th

- Cir. 1990); (Superintendent V. Hill, 472 U.S. 445, -

86 L.Ed.2d 356, at 367, 105 S.Ct. 2768.) (The Loss -

* of an important "Liberty Interests" Violates Due Process" (Alleged Herein.); (Harris V. Nelson, 394

U.S. 286, at 290 to 292, & 300, 89 S.Ct. 1082, at 1086, -

22 L.Ed.2d 281.) (HEARINGS ARE MANDATORY) -

Citing:- (United States V. Atkinson, 297 U.S. 157,

at pp. 159-160.) (1936) ALL Courts who, are "STONEWALLING -

- THE LAWS" & "Due Process Rights" Are Damaging "The -

- Integrity, or Public Reputation of Judicial-Proceedings")

; (Darr V. Burford, 339 U.S. 200, at 201-203, at 214-215, &

- 218, 220, 238, 94 L.Ed. 761, 767 & fns., 769.) (Citing :-

Cont.)

See p. 4.)

Page 4, Continued: - ORIGINAL July 7th, 2007.

... Citing: - (Mooney v. Holohan, 294 U.S. 103, 79 L. Ed. 791, 55 S.Ct. 340.); And (All Citations Therein.) "ALL - Those Legal Authorities agree that Res Judicata Does Not Apply To Applications for Habeas Corpus!!"

STATEMENT OF FACT:-

These are such EXTRA-ORDINARY - Instances and Circumstances' - that Requires the ~~Dis Regards~~ of Accustomed Procedures' - (In The Best Interests of JUSTICE.) This Habeas Corpus Enclosed Petition "Be Held" - "Not in Subord - ination To Any (Past) Proceedings; it "Opens The Doors Of Inquiry." (& it's "Underlying Facts.")

"Whether, They have been More Than An "Empty Shell." (Id. at 346.) (DARR V. BURFORD, Supra, page 218.)" And Case Laws Cited Therein!!

It's NECESSARY TO STATE, WE Have such Compelling-Facts' of such EXTRA-ORDINARY - CONDITIONS And CIRCUMSTANCES:- Which are Being Totally (IGNORED) Via., Cal. Supreme COURT, likewise, Dis Regarded By U.S. Magistrate ALDER'S Denials & is "STONEWALLING Petitioners Constitutional Merits" - While upholding Chief JUSTICE R.M. GEORGE - Many Denials of genuine Due Process & "EQUAL PROTECTION OF THE LAWS" Against Him & Against A Class of Society. See, (Insert Page A). -

(4)

(OVER)

Continued):-

.... "COURTS OF SHAME & TORTURE."

Said Court acting in, ULTRA-VIRES — Without genuine HONOR & INTEGRITY — Serving POLICE-STATE-Mentalities — NOT SERVING THE AMERICAN PEOPLE. Point of Facts:-

NOTICE:- WE Are Trying To get (Both) Houses of U.S. Congress To [AWAKEN] their Chairman, JUDICIARY COMMITTEE(S) Whom Likewise are DUTY BOUND TO SO [AWAKEN] Mr. President GEORGE W. BUSH, ESQ, To this grave Danger, When He is allowing; COURT(S) OF SHAME, Flourishing - California's COURTS OF SHAME, Living in, "Dirty-Tricks & Politics" — Not Living & Serving Under The Rule of LAW & Constitution. While, Likewise, Insulting Our American Heritage of Freedom, Allowing That EVIL SYSTEM (Pandemic) to Prosper?

* * * Instead of Correcting This EVIL SYSTEM It's Flourishing going in The WRONG Direction, Turning JUSTICE into Poison. (Proverbs 28:5.) (K.J.). The Following are The legal Facts to receive Honorable Due Process of Our Well Established LAWS — (Herein, Being Denied & Deprived).

* * * Pursuant to:- (Wingo V. Wedding, supra, 418 U.S. 461, at p. 468, 41 L.Ed. 2d. 879, at p. 885, 94 S.Ct. 2842.) (1974.).!

The U.S. Magistrate ALDERS:- Does Not Honor, Nor, Secure well Established Federal Statutes & Federal Principles for Truth & Justice To Be Served
(Cont.) see p.5.)

Page 5.) Continued):- ~~ORIGINAL~~ July 7TH, 2007).

TRUTH BE TOLD:- See,

Page 879 (411 U.S. 879):- "It was Held That (1) The Federal Habeas Corpus Statute (28 U.S.C. Section 2243.) is to be construed as Requiring an EVIDENT-
-RARY Hearing By A Federal Judge Personally; (2) - The Federal Magistrate Act Does NOT Change This Requirement. (Notice:- (Petitioner Has "Disqualified" The Magistrate, Via Motion Sept. 2006.) And Jan. 7, 2007) (As A Corrupting Influence - No Faith in Magistrates.)

* E.g., (Her Erroneously Believing) Allegations Her Job, is Up Holding The Misconduct & Constitutional ERRORS -
* Being So "Politically-Correct." (While) (Dis Regarding - The Relief & Remedies in The Constitutional LEGAL Authorit-
-ies duly Cited by The Petitioner H/C Petition Attached.).

Page 468, (418 U.S. 468.) "Under Our Constitutional Framework the "Great Constitutional Privilege", of Habeas Corpus, (EX Parte Bollman, (4 Cranch) 75, 95, 101, 2 L. Ed. 654) (1807) (MARSHALL, CHIEF JUSTICE,) Has Historically provided -
"A prompt and efficacious Remedy for whatever Society deems To Be Intolerable Restraints." It's root

Principle is that in A Civilized Society - Government must always be accountable To The Judiciary FOR

A MAN'S Imprisonment:- (IF) The Imprisonment -

CANNOT Be Shown to conform with The Fundamental Requirements of The LAW, The Individual IS Entitled -

to His Immediate Release." (Fay V. Noia, 372 U.S. 391, at -

(5) Cont. (OVER)

Continued.): - (AMICUS-CURIAE)^L

... 401-402, 9 L. Ed. 2d. 837, 83 S. Ct. 822.) (1963).

Accordingly, since The Judiciary Act of February 5, 1867, c28, Sect. 1, 14 Stat. 385, Congress — Has expressly vested plenary power, in The Federal Courts, "for taking Testimony and trying The Facts Anew in Habeas Hearings...fn 5.) (That's!

*** All we are seeking examine the Lack of Factual Evidence.)

(Fay v. Noia, supra, at 416, 9 L. Ed. 2d. 837.) See Also, (Townsend v. Sain, 372 U.S. 293, at pp. 312-313 (& its six-Sub. divs.) 9 L. Ed. 2d. 770, 83 S. Ct. 745.) (1963) (Emphasis — Supplied.) (Id. at 885.)" See, Also, , ,

Page 886, (418 U.S. 463): - "A Federal Judge on a Habeas Corpus Application is Required to 'Summarily Hear and determine The Facts and dispose of the matter as LAW and JUSTICE Require.'" 28 USC.

Section 2243, [28 USC. Section 2243] This Has Long Been The LAW. (Id. at 886.)! See footnote 10,

A Full Discussion of The Magistrate's Act (Id. at 886.)!!

Please Take JUDICIAL NOTICE:-



The writer for Petitioner ALVAREZ.) (THOMAS E. SPYCHALA, ESP., B44248.) Has An Open Challenge in This 9th Cir. COURT OF APPEALS - & House or, Senate (JUDICIARY COMMITTEES-14th Amend. Sections 1, & 5.) for The Presence of Chief Justice RONALD M. GEORGE, & Both Federal & State Attorney General(s) on Issues —:-


*** COURTS OF SHAME "STONEWALLING THE LAWS".....

sup. (A)

CONT.)

see p. 6.)

 INSERT - Page (A) 

ORIGINAL 

WE Should Define In Plain
Simple English Language

What Constitutes COURTS OF SHAME!
(In A SYSTEM That Lost It's Direction.

"COURTS OF SHAME' And TORTURE" Are
Such COURT(S) Allowing Other COURT(S) To:-
"POLITICIZE THE LAWS" & In so doing, it's Allowing
"STONEWALLING THE LAWS"; Against A Class
... of Society. (Amicus-Curiae.)"

TORTURE = 8TH; Amendment Violations Are
"EXCESSIVE - PUNISHMENTS" — Inflicted Under
WRONG — FACTS — Without any genuine Reason
Or Cause! — It's NOT Rational Conduct,
nor, is such Legal Conduct In Our So Called
DEMOCRACY!! RES IPSA LOQUETUR. (50 Page
Habeas Corpus Petition, Requires "Mandatory Hearings,
Under, (Harris V. Nelson, supra, 394 U.S. 286, at 290-
-291-292, & 300, 89 S.Ct. 1082, at 1086, 22 L.Ed. 2d 281.)"
"For Safeguarding Individual(S) Freedom", AGAINST
ARBITRARY And LAWLESS State Proceedings." (Ibid.);
(United States V. ATKINSON, 297 U.S. 157, at p. 159 -
-160.) (1936) ("Public Interests in Bringing litigation ...

(Page A)

(OVER)

Continued (Insert Page A.): -

....TO AN END (DEMANDS) Correcting ERRORS, Affecting The Fairness, The Integrity, or Public Reputation of Judicial Proceedings". The STRICKLAND & BRADY ERRORS were NEVER Adjudicated."

"STONEWALLING IT" as properly changed.....

"STONEWALLING THE LAWS" Are Such "Egregious-ERRORS" likewise, are 'USURPATION OF THE JUDICIAL-PROCESS' - & are Defects Under FRCP, 52(b).

WE NEED TO SO RESTORE TRUTH IN THE LAWS — for The Supreme Good, of ALL Citizens.

(Sum + Sum — Bo-num.).⁴

* * * The Doctrine is that the "Loss of Fundamental Constitutional Rights" — Outweighs The Values behind The Rules per se". (United States V. Atkinson, 297 U.S. 157, at 159-160. (1936); see Cf., (United States V. Taylor, 54 F. 3d. 967, at pp. 972-973.) (1st Cir. 1995). Under, (DARR V. BURFORD, 339 U.S. 200, 201-203, at 214-215, 218, to 220, 238, 94 L. Ed. 761, 767 & fn. 769: Citing: (Mooney V. Holohan, Et. AL)."

RESPECTFULLY SUBMITTED,

Dated: June 22, 2007)

/s/ Anthony Alvarez

TONY ALVAREZ,

V-12/45) C-Facility C3-111-L,

In Pro Se,

Page 6, Continued.):- ORIGINAL July 7th, 2007

... Via, our "Politicized Courts". To Facts:- Police-
-State-Mentalities' are in Charge of The State of
California's Judicial Systems Offending & Insulting Our
Founding Fathers and Our Heritage of Freedom our "Vested
Rights"!! (Daily). All of The above Federal Rights
are Being Denied & Deprived in, (Wingo V. Wedding, supra.)

U.S. Magistrate JAN M. ADLER, Failed & Refused To
Acknowledge ALVAREZ-Petitioner's most Fundamental
Federal-Constitutional Rights - Whereas, His whole Case,
is based upon Federal Constitutional Rights which are
Being (IGNORED) "STONEWALLING IT".

E.g., is The critical Issue - "Disproportionate Sentence"
based on 40 & 37 Year old Priors - With Time Served.
No Hard Evidence, No Material Evidence - No Rights
To Be Heard - Under FULL Disclosure. (Citations.)

The MAGISTRATE, acting as A Friend of State -
Courts - (Not Objective) - NEVER Addressed (ANY) of The
Petitioner's Legal Claims - in 50 Page Habeas Corpus ??

E.g., Magistrate, cites (4) Cases To Issue "Disproportionate
Sentence" None of them Directly applies To His Legal Issue!

See H/C, Ground 5, Page 1.):- A Case That is Right
on point with The Petitioner's Legal Facts & Claims, (In re -
Lynch, 8 Cal. 3d. 410, at 424.) (1972) "The Cal. Supreme -

Court Held:- "That A Punishment may violate Article I,
Section 17, of The Calif. Constitution IF & Although Not
Cruel or Unusual in it's Methods, it is so very.....

(6)

(OVER)

Continued.):-

... DISPROPORTIONATE To The Conduct / of The Crime for which it's inflicted, That it 'Shocks The Conscience', and Offends our Fundamental - Nations of (Defendants / Petitioner's) Human Dignity - Rights." (Emphasis Supplied) (Id. at 424.) !"

* Bear in Mind - This Sentence is The Resulting Collateral-Consequences - Suffering (One-sided-Trial) Lacking Defence, ADVOCACY; Jurors Never Heard The Underlying-Facts - Magistrate NEVER could see, any lack of Advocacy - well pled Issues, (McMann V. Richardson, 397 U.S. 759, at 771 footnote 4, 90 S.Ct. - 1441.) (1970); (United States V. Cronin, 466 U.S. 648, at 650-652, 80 L.Ed. 2d. 657, at 662-663-664, 104 S.Ct. 20, 39.) (1984). (Truth Be Told):- The Facts and Evidence is (MOB Rule) Because of His Past Criminal Record, relying on Facts not in Evidence - Unwarranted Prejudice - Lacking Effective Counsel at Trial and At Appeals !

* * * Never Addressing The Well Plead Merits (Disregarded)

All Petitioner Has Had from Appointed Counsels were - i.e., Cover-Ups - No Active Advocacy - But Are Friends of Corrupt Courts - in Treachery, Deception & Deceit. ! (Anders V. California, 386 U.S. 738, at 743, 18 L.Ed. 493, 87 S.Ct. 1396.) (1967); (Evits V. Lucey. 83 L.Ed. 2d. 821, 827-828-829, 469 U.S. 387, at 395-396, 105 S.Ct. 830.) (1985); (Strickland V. Washington, "Failed To Address nor, Adjudicate The Merits", 469 U.S. at 395-396, 83 L.Ed. - (Cont.) See P.T.) ...

Page 7, Continued.):- ORIGINAL July 7th, 2007.)

... 2d. at 829 & fn. 6.); See the purpose & Ultimate object" of having legal Counsel, (Herring v. New York, 422 U.S. 853, at 862, 45 L. Ed. 2d. 593, 95 S. Ct. 2550, (1975) (Id. at 665, Cronin.) supra.). (Amicus - Curiae.)

* Clearly, U.S. Magistrate ALDER, — Had NO INTENTIONS TO Find Anything WRONG or EVIL — That Petitioner is Denied "FULL-DISCLOSURE" and Denied His guaranteed "Rights To Be Heard." (Citations)." No objections from P.D.?

* See Ground Four, pages 6, 7 to 9, sets out Facts & Reliable Evidence of The States functioning in Arbitrary Powers — After Failing To Guarantee His Rights To A SIXTH-Amendment Fair Trial!! Touched "A Live Nerve" in Defense.

E.g. The Trial & Sentencing Judge LAURA P. HAMMES, Violated Petitioner's Rights To A Fair Trial and likewise, * To A Fair & Honest Sentence "Touched" A Live Nerve, by Striking at The Heart (of The Defendant's Defense) and Past Criminal Record. Perverting The Truth & The LAW at Sentencing — Falsely Claiming Mr. ALVAREZ, "Is A Poster Child" for the "THREE STRIKES LAW." ? Which is The EVIL and WRONG Attitude for A Judge — Not Objective, Nor, LEGAL!

TRUTH BE TOLD:-

* Mr. ALVAREZ, is A Genuine Poster Child, — Exactly, For ALL That Is WRONG, in Unequal — Provisions, In "THREE STRIKES LAW" (No Corrective-Process) esp. for "WOBBLEERS" (Citations) The Taxpayers.....

(7)

(OVER)

Continued.):-

.... NEVER ~~WATER~~ VOTED for Non-Violent Misdemeanor(s) To Be Sentenced under "THREE STRIKES LAWS" — CONCEALED FROM The Public — Taxpayers.
 // // //

This APPEAL WILL BE FOUGHT & WON
 Via, THE SUPREMACY CLAUSE, Article VI,
 Section 2, United States Constitution; Article III,
 Section I, Et. Al, California Constitution.
 // // //

*** Moreover, Under, (Townsend V. Sain, Supra,
 372 U.S. 293, at pp. 312-313, "HEARINGS ARE MANDATORY" —
 Under ALL Six Dir. Requirements). No.1. "The Merits —
 of the dispute were inadequate, Not resolved at State
 Hearings; No.2.) "The State Determination is Not Fairly
 Supported By The RECORD; No.3.) "The Fact-Finding
 Procedure was Inadequate"; No.4.) There are Under-
 -lying Facts" (Concealed) From The JURORS"; No.5.) "The
 Material-Facts" were Not Adequately Developed."; !
 No.6.) "The Petitioner Was Not Afforded (ANY) FULL
 and Fair Hearings on the Merits." (Id. at 312-313.) !

PLEASE BE ADVISED:-

These True Principles (& Requirements) Under The
 Spirit of The LAW (Will Be Satisfied) It is THE LAW !

The "Spirit Of The LAW" is Superlative In THE LAW.
 The Spirit of The LAW Principle is Violated Via, COURTS OF SHAME, And....
 (Cont.) See, p. 8)

Page 8.) Cont.): - ORIGINAL July 7TH, 2007

...are connected with TERRORISM in (IRAQ) (ASIA);
 CANNOT BE SEPARATED (Edification). YES, This, Calif.,
 SYSTEMS OF "STONEWALLING THE LAWS" AGAINST
 The Middle Class & Poor People Are "INEXTRICABLY -
 -INTERTWINED" with our WAR AGAINST TERRORISM
 -In (IRAQ) (ASIA); Under Universal Spirit of THE LAW -
 & JUSTICE - "The Spirit of The LAW Dictates JUSTICE."
 Awaken! That's what "STONEWALLING THE LAWS"
 Brings To This Nation DANGER NOT Any Security!
 In, (Amicus - Curiae).

RESTORATION - GENERATION:-

There Fore, There is much [MORE] going on -
 Herein, (9TH Cir. Court of Appeals; & U.S. District Court) And
 U.S. Houses of Congress Than, e.g., (THOMAS E.'S Case No. 154648),
 and Mr. ANTHONY ALVAREZ, Case No. 3:06-2112-WQH.!!

"VERY SERIOUS BUSINESS."

* * * Before Rational, Reasonable Minded People.
 * "STONEWALLING THE LAWS" (Systemically) is (Daily)
 Insulting Our Heritage of Freedom, moreover, it's
 Being Done Against ALL Citizens. (Secretly).

NOBODY CAN CHANGE THE TRUTH, Nor REALITY!

The Federal Court(S) And The Congress Must Finally
 RECOGNIZE With FULL ACKNOWLEDGEMENT - that -
 WE THE PEOPLE, CANNOT HAVE Such -
 COURTS OF SHAME - Profaning THE RULE OF -
 - THE LAW And CONSTITUTION!

(8)

(OVER)

Continued.):-

So To, Our Mr. President GEORGE W. BUSH & ADVISORS, MUST MAKE That (Above) RECOGNITION & ACKNOWLEDGEMENT & CORRECT, & RESTORE — Our American SYSTEM — TRUTH IN THE LAW. Article II, — Sections 2 & 3, UNITED STATES CONSTITUTION.

Whether, Mr. Pres. BUSH — Can RECOGNIZE — AND ACKNOWLEDGE, Our National Security is in Dire Jeopardy — He (Mr. Pres.) ALLOWS California SUPREME COURT & COURTS :- To Live as :-

* * * "COURTS OF SHAME' and TORTURE," To Be Flourishing — while Pretending The System is so Working Correctly?? Mr. Pres. BUSH, CANNOT WIN ANY WARS AGAINST TERRORISM In (IRAQ) (ASIA).

"(A House) (A STATE) DIVIDED AGAINST ITSELF — WILL BE DESTROYED." — Abraham LINCOLN. (Citations).

Wherefore, You See, Whenever, Any U.S. Magistrate Trys To Live in "Political-Correctness," — Turning — Her Blind-Eyes' — while DISREGARDING The Merits' & Dis Regarding ALL The Federal LAWS & Authorities for Securing His Fundamental-Rights, To A Fair Trial; To Full and Fair Hearings on The Merits in ALL Appeals, Objectively. (We are Never in Contempt — When We — Speak Clear Truth & Reality of any given Situation.)

Such Magistrates (Dis Regarding Citizens "Vested-Rights" To receive genuine Due Process, & Equal Protection of The LAWS.

Such Magistrates — are serving Police-State-Mentalities'
(Cont.) See p. 9.)

Page 9, Cont. :- *ORIGINAL* July 7th, 2007

... Absolutely Not Serving The American (Taxpayers) People; nor, Serving Well Established Due Process Legal Authorities providing required Relief & Remedies — from Arbitrary State Courts Abuse of Process, Via ALL Federal Citations cited in His Habeas Corpus Petition.

Consider The True Facts — The RECORD Reflects The State Never Borne it's "Burden of Proof" that two Home P.C. 459's Burglaries were committed Penal Code Section 459. — No such material — evidence — & No Finger Print Evidence found at 1st, Burglary — only Hearsay — Evidence — Lacking Rigorous Cross — Examination. Witness claimed She saw Mr. ALVAREZ Leave The Burglarized Apartment?? No Evidence....

There was No Investigation & No (CSI) Investigation of The Crime Scene — He was Erroneously Convicted Largely By His Past, 40 & 37-year Old Priors. Upon our Allegations * No Pen. C. 459's — occurred By Mr. Tony ALVAREZ, in so doing — The Trial was "A Farce and A SHAM", Proceedings.

There Fore, His 60-Years Plus Sentence is "Shocking To The Conscience", and violates "Clearly Established Federal LAWS; Under U.S.C. Section 2254(d)(1) is the governing — Legal Principle. WE assert EIGHTH Amendment Violations * * * are "Clearly Established Federal LAWS" Under U.S.C. Section 2254 (d)(1), and we assert Petitioner's Sentence is The Rare Sentence herein — Extreme Case.

Let's Hear what Federal JUSTICES claim as we do, in 50 Page Habeas Corpus as being "Exceedingly Rare."

(9)

(over)

Continued.):-

... and this is Exceptional Case *ipso facto*.

(Lockyer V. Andrade, 538 U.S. 63, at 72-73, 155 L. Ed. 2d. 144, at 145, 123 S.Ct. 1166 (2003). All while The State Courts (knowingly) are covering-up (Absence of A Fair Trial).

Page 145:- "JUSTICE SOUTER; Joined By STEVENS and GINSBURG, and BREYER, J.J. dissenting said That:-

(1) The Accused's Sentence was The Rare Sentence of gross - disproportionality Prohibited By The EIGHTH Amendment, for, if The Sentence were * Not grossly disproportionate than The Principle that prohibited a sentence grossly disproportionate to the offense for which it was imposed Had No Meaning and (2) The California Court of Appeal's * Holding was an UnReasonable application of established Precedent. (Emphasis supplied) (Id. at 145.)"

(Andrade, supra, 155 L. Ed. 2d. at 145.) (2003.)

Magistrate Fails To Obey Federal LAWS:-

"The Magistrate gives deference To State Courts finding of Fact and presumes them To Be correct." (?)

"Petitioner may rebut The Presumption of Correctness; but only by clear and convincing evidence 28 U.S.C. Section 2254(e)(1). (?) (TRUTH BE TOLD):- WE Have:- WE Showed The Court Magistrate - A 50-Page Petition of Compelling True Facts (Egregious Trial ERRORS) - of State Courts MisRepresenting Well Established LAWS & Statutes - She Dis Regarded ALL of His Constitutional Merits - Not Good Conscience....!

(Cont.)

See p. 10)

Egregious ERRORS

Page 10, Cont.): ~~ORIGINAL~~ July 7th, 2007).

Check Magistrate: "The Facts By Appellate Court — are as follows: — (?)

- 1) "On March 10, 2003, ALVAREZ, broke into an
- 2) Apartment in A Hillcrest Complex. He Took Property
- 3) worth between \$200. and \$300. Dollars — (Magistrate is —
- 4) Entitled To Her Own Opinion! She Absolutely By LAW is
- * Not Entitled To The WRONG FACTS) (If) His Public Defender
- 5) was Adequate as An Advocate of Defense — He would Have exposed — Those False Facts. (Truth Be Told): —

* * There Exists No Reliable, Honorable True Material — Facts To Support (The Above 5-Lines). There Exists No Material Evidence that Petitioner Broke into Any Apartment — PERIOD! Looks Like Pure Prosecutorial — "Manufactured Evidence" it's WHY State granted No Required Evidence — No Evidentiary Hearings. See, Requirements: —

"No. 1.) "The Merits of The dispute were In Adequate — Not Resolved"; No. 5.) "The Material Facts were Not Adequately Developed."; No. 6.) "The Petitioner was Not Afforded (ANY) Full and Fair Hearings on The Merits." (Ibid.)

// // //

Our Pledge Of Allegiance: —

Our Pledge Of Allegiance States: — "WE Are One Nation Indivisible With Liberty and JUSTICE — FOR ALL!" (None Are EXPENDABLE For ANY HUMAN SACRAFICE, AS Politically Motivated... .. Via, COURTS OF SHAME And TORTURE!

TRUTH BE TOLD: —

//

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H

(10)

(OVER)

Continued.) :-

WE HAVE INVOKED 'ORIGINAL HABEAS
— CORPUS JURISDICTION WITHIN,
THESE FEDERAL COURTS.

(AMICUS - CURIAE) :-

"The (AEDPA-Act) — "Does Not deprive
This U.S. Dist. Court, Nor, 9TH Circuit U.S. Court
of Appeals of their correct & Proper JURISDICTION"
To Entertain "Original Habeas Corpus Petition."

Therefore, Petitioner's (Plainly) "A Counterfeit-
Conviction" Via, manufactured-evidence Covered-Up
By Corrupt State Court(s), Should Not Be Barred
nor, Restricted By "New Rules". (Kuhlman V. Wilson,
477 U.S. 436, at p. 454. (Emphasis Supplied.) (Plurality
Opinion.) (1986); See Also, (Ex Parte Bollman, 8 U.S.
(4 Cranch) 75, 95, at pp. 100-101.) ("Original Habeas Corpus —
JURISDICTION." (1807) (Chief Justice MARSHALL.); (Wingo V.
Wedding, 418 U.S. 461, at 468, 41 L.Ed. 2d 879, at 885-
886, 94 S.Ct. 2842. (1974) (No Magistrate's Opinion); See also,
(Casey V. United States, 48 S.Ct. 373, at 376-377, 276-
U.S. 413, at 424-425.) (1928) ("To Protect The Government."
"To Preserve The Purity of it's Courts.") (Mr. JUSTICE
OLIVER WENDELL "HOLMES.") (1932)."

Questions Arise :-

"When Did These Alleged:- COURTS OF SHAME, Get
This WRONG-Headed Idea, That Prisoner(s) Are i.e.,
[EXPENDABLE] as for Human Sacrifice" for
— Political Purposes? — Not for any Public Interests. ?

(Cont.)

See p. 11.)

Page 11.) Cont.): - ~~ORIGINAL~~ July 7th, 2007.)

Those COURT(S) LOST RESPECT FOR
OUR Human Life? Once Upon A Time..."
"RESPECT FOR THE INDIVIDUAL - IS THE LIFE-BLOOD
- of The LAW." (Calif. Courts & U.S. Magistrate(S) are
Not Conscious of That Principle - nor, of The Word -
- Indivisible in our Pledge of Allegiance - The Big ~~Picture~~
- Picture on The BOTTOM LINE - Escapes Their Consciousness...!

In any Case The Principles NEEDS RESTORATION.
(Forette v. California, 422 U.S. 806, at 834-835,
& Pns.) (1975); (Illinois v. Allen, 397 U.S. 337, at -
350-351, 25 L. Ed. 2d. 353, 363.); ET AL.).
(Amicus - CURIAE.)

California's Problems Adhering
To Political - Correctness:-

Anti-American Attitudes:-

There is NO Ring of Truth, Nor, of Reality With
RECOMMENDATIONS of U.S. Magistrate JAN M. ADLER!
She Has [ONLY] Proven That Calif. SUPREME
COURT & COURT(S), Do Not Have ANY Effective nor
Adequate 'Systems of Checks & Balances' - No Truth Seeking
Procedures. They Only Have:-

"COURTS OF SHAME & TORTURE" Running Under
- DUPLICITY - NOT Serving DEMOCRACY!

Thereby, Insulting ALL American Citizens and
Our Precious Heritage of Freedom.

As for The Grossly 'Disproportionate Sentence' Well
Pled & Disregarded By Magistrate. See, This Appeal....

(11)

(OVER)

Continued. J:

... (COA) page 9, The Back of page 9, Four U.S. SUPREME COURT JUSTICES agrees with our Facts & Conditions:-
 "Accused Sentence was That 'Rare Sentence' of 'Gross-Disproportionality' Prohibited By The EIGHTH Amendment." "(a) 'The California Court of Appeals Holding was An UnReasonable Application of Established Precedent.' EIGHTH Amendment Violation. ALL UnConstitutional Conduct..."

(Andrade, supra, 155 L.Ed. 2d. at 145.) (2003)."

Magistrate(S) MisReading The Critical Facts Within His 50-Page Petition

FOR Writ Of Habeas Corpus. (Enclosed).

(28 USCS, Section 2243.)."

* We Have stated Factual Violations of His Federal guaranteed Constitutional Rights — Bratantly Violated in 'A Force and Sham Trial'. When Petitioner claims His 6th & 14th Amendment Rights are Violated (Magistrate claims — Those are States Rights?). Those are ALL Federal Constitutional Claims Well Established Federal Precedents!

* Whereas, Magistrate Believes it's Her Job to Cover-Up All the State's Violations presented. Moreover, She Lies, When She Claims That She "Looks Through" To The Underlying Appellate Court's Decision. (??) (TRUTH Be Told):-

* The Appellate Court's Decision is Contrary TO The True Facts — it is UnReasonable Application, of clearly Established Supreme Court LAW — (Citations in pleadings) (28 U.S.C. Section 2243.) (Id. 886.). The State Court(s) Decisions Contradicts All of The Supreme Court's Precedents We cited."

(Cont.)

see p. 12.)

Page 12, Cont.): - ~~ORIGINAL~~ July 7th, 2007).

Facts: There is No Reliable - Honorable Tangible - Material - Evidence That Mr. ALVAREZ - Broke into Any Apt. Period!! That is WHY - State Courts Denied His "Rights To Be Heard", Under Full Disclosure "Citations".

We have shown Magistrate Fails to Acknowledge nor, Obey Our Well Established Federal LAWS!

* * * (TRUTH Be Told): GROUNDS 2, 3, 4 & 5) Could & Should Over Turn "THREE STRIKES LAWS" (Abuse) esp., Sentencing Prisoners on non-Violent (Mis Demeanors) Crimes Should Be Realistically (UnConstitutional Standards) By 9th Cir U.S. Court of Appeals - Herein. E.g., A Truly Grossly Disproportionate Sentence of 60-Plus Years - Where, No Reliable - Honorable Material - Evidence - That Mr. ALVAREZ - Had indeed

Committed Any Pen. Code 459's - All Abuse of Arbitrary Power - This Case, Exposes, The lack of Eagerness To Serve The Truth, and, and Serve THE LAW - Against A Class of Society. (AMICUS - CURIAE.)

* * * THE BOTTOM LINE ISSUES Are No State Courts Honored His Fundamental Constitutional "RIGHTS TO BE HEARD" - Under "FULL DISCLOSURE". The Magistrate Failed To Address Any Crucial Facts - In ALL 5 - GROUNDS - Clearly They are Meritorious - Demanding The Public "Light & TRUTH" in The LAWS. Not This Cover-Up's of AN EVIL SYSTEM OF:-

"STONEWALLING The LAW - Politicizing THE LAWS" - In sulging Our Founding Fathers and our Heritage of Freedom. See, (People V. Williams, 17 Cal. 4th, at 162-163).

Continued.):-

... Contending Under Lack of Material Evidence —

Defendant (ALVAREZ) Should Be Deemed Outside The Spirit of The "Three Strikes Law", and should be treated as though He Had not committed one or more Strike Priors." (Id. 162-163.)

Then JUSTICE Would Have Been Served!

WE Believe Any Rational Reasonable Minded Judge Will find The Five Grounds in (Enclosed) Habeas Corpus are Meritorious pursuant To ALL Six Sub. dirs. at (Townsend V. Sain, Supra, 372 U.S. at 312-313, and All Six Sub. dirs. [Requirements] Fits The Facts of This Case & it's State's Covers-Up' — "STONEWALLING THE LAWS"

CONCLUSION:-

WE Understand (Citations) HEARINGS ARE MANDATORY.

FACTS:- It is this Awakening Time For AMERICA — These California "COURTS OF SHAME" AND TORTURE —

Brings DANGER TO THE Nation. — Not (AM) Security, NOT ANY JUSTICE! (Proverbs 28:5.) (K.J.)

(Wingo V. WEDDING, 418 U.S. at 468; Hill, Et al. at 885-886, 94 S. Ct. 2842, (1974). Then There is Our National

* * * Security Issues; See, This Appeal (COA) Back of Page 7, and Both sides of page 8. "Very Serious Business". There is No Escape From The Truth or Reality — for All People. !!

"STOP THIS Politicizing THE LAWS."

(STONEWALLING IT!)

Petitioner PRAYS This Honorable Court will i.e., Address, & Correct, Adjudicate These Substantial Constitut-
-ional Merits Presented Factually for Relief And Remedies.

Cont.) See p. 13.)

Page 13, Cont.): - ORIGINAL July 7TH, 2007)

Esp., from Alleged EIGHTH Amendments' —
Violations — Prohibited By Both The Federal and California
State Constitution, Article III, Section 1.)

The National Security Issue — CANNOT BE
REPEATED ENOUGH' — Until, it's RESONATING' —
THROUGH OUT OUR JUDICIAL SYSTEMS.

Unless and Until' Mr. President GEORGE W. BUSH,
ESQ., Truthfully Deals with These (ISSUES) that State
* of California Lives & flourishes under "Politicizing THE
LAWS" Against A Class of Society; Both Houses of Congress
Have Mandatory Duties & Responsibilities To SO Awaken'
Mr. President BUSH, ESQ., do to facts Issues are SO
connected with The WAR AGAINST TERRORISM in
(IRAQ) & (ASIA) CANNOT BE SEPERATED. !!

YES, THIS SYSTEM OF 'STONEWALLING THE LAWS'
AGAINST A Class of Society Via, California's SUPREME
COURT & COURTS !! That Systemic EVIL —

is i.e., "INEXTRICABLY — INTERTWINED" with our
WAR AGAINST TERRORISM IN (IRAQ) (ASIA),
in (JIHAD) ! That Issue is well Pled. Awaken —

Therefore, This is Not ALL About Mr. TONY —
* * * ALVAREZ, Case — However, it's Issues are
Affecting ALL Citizens — Bear These Facts in Mind!
With our Pledge of Allegiance: "WE Are One Nation
Indivisible with, LIBERTY & JUSTICE FOR ALL!"

Continued.):-

Allegations:- California SUPREME COURT & COURTS
DO NOT Practice Under These Precepts and
Principles. (Above)...

WHEREFORE, Mr. TONY ALVAREZ, Needs
His Required By LAWS Evidentiary Hearings
Pursuant To Clean His Name From False Charges'-
So That JUSTICE Will Be Done.

RESPECTFULLY SUBMITTED,

I swear, certify and declare, under penalty
of perjury, that All of The foregoing is ALL
True and Correct, stated upon information and
Belief, and I Believe it's All True & Correct.

Dated & Signed under Title 28 U.S.C. Section
1746.); and California's C.C.P. Section 2015.5.)

Dated:- July 7TH, 2007.)

(ORIGINAL)

RESPECTFULLY SUBMITTED,

See, *ADDENDUM*
& PROOFS OF SERVICE
Attached hereto,....

/s/ Anthony Alvarez
ANTHONY ALVAREZ,
Y-12145, C-Facility, C-3111,
CENTINELA STATE PRISON.
Post Office Box - 921,
Imperial, Calif. #92251)
In Pro Den.....

(cont.)

see 14.)

Page 14, Cont.):

ORIGINAL

July 7th, 2007

* ADDENDUM *

MOTION FOR HONORABLE
LEGAL COUNSEL ASSISTANCE.

I, ANTHONY ALVAREZ, (V-12145)(CESP) Being of A - Sound Mind and in Control of ALL of my Faculties, Do Hereby, swear and declare under penalty of perjury ALL of The Foregoing is ALL True and Correct.

Invoking ALL The Constitutional Principles Required In, (Johnson V. Avery, 393 U.S. 483, at 490 491.); (EX Parte HULL, 312 U.S. 546, at 548-549. (1941).

In ANY Court Required Hearing, Against my Illegal State Custody - I WILL NOT Accept Any Appointed * Public Defenders - Nor, Any U.S. Magistrates - To Be Determining Any Facts & LAW in my Case. I want, Mr. THOMAS E. SPYCHALA, ESQ, (B-44248) "C-Facility, C-3-115-L)(CESP) TO Represent Me (ALVAREZ) in Any & ALL Evidentiary Hearings - Regarding My Illegal - State Custody, By the State of California (see, (Wingo V. Wedding, supra, 418 U.S. 461, at 468, 41 L. Ed. 2d. 879, at pp. 885-886.) (1974).

I, (ALVAREZ) Absolutely Having No Faith, & No Trust, in Any Public Defenders, Nor, U.S. Magistrates Whom Have (Dis Regarded) my "Vested" Citizenship Rights." Such Officials are Serving Being "Politically-Correct" - Having Abandoned - Our American System of Truth Seeking And Serving The True Genuine Cause of Justice!

(14)

(OVER)

Continued:-

WHEREFORE, I Refuse Any Appointment of (ANY) Legal Counsel; In my Defense I want and NEED' THOMAS E. SPYCHALA, ESQ. To Represent my Cause of (Illegal Incarceration) He Fully Understands my Case Issues, He Has Expertise' in Constitutional LAWS,

*** He is Extremely Honorable and Trustworthy in ALL Matters in Question Here; Esp., Under Our genuine LAWS & Constitution — Being DeFrauded Here.

He Fully Understands All of my Constitutional Claims & Issues — I trust Him fully with my Life. I do Hereby swear and declare under penalty of Perjury All of The Foregoing is All True and correct. (Title 28 U.S.C. Section 1746.)

Dated: - July 7th, 2007.)

RESPECTFULLY SUBMITTED,

* ORIGINAL *

See Proof's of ...
... Service.

Anthony Alvarez
ANTHONY ALVAREZ,
V-12145.) C-Facility, C-3-111-6,
CENTINELA STATE PRISON.

P.O. Box-921,
Imperial, California
#92251)

In Pro Per...

Short Title:

ANTHONY ALVAREZ VS. VICTOR M. ALMAGER, Warden

Court Case No.:

306-2112-WQH.)

Case No.

*** ORIGINAL *****Proof of Service By Mail**I am over the age of 18 and a party ~~not a party~~ (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON (I.D. # V-12145)
2302 BROWN ROAD
P.O. BOX 921
IMPERIAL, CA. 92251

I served the attached:

NOTICE OF APPEAL & MOTION TO PROCEED IN -

By enclosing true copies in a sealed envelope addressed to each person

U.S. Magistrate RECOMMENDATION; 50 Page H/C... (- Forma Pauperis.)
whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: July 7th, 2007

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

HON. JERRY BROWN, ESQ, Attorney General,
DEPARTMENT OF JUSTICE,
1300 First Street, Suite 125,
Post Office Box - 944255,
Sacramento, California

I certify under penalty of perjury that the foregoing is true and correct.

#944255)

DATE: July 7th, 2007ANTHONY ALVAREZ,

(TYPE OR PRINT NAME)

V-12145) C-Facility, C-3-111-L)
CENTINELA STATE PRISON

#92251)

(15)

▶ Anthony Alvarez
(SIGNATURE OF DECLARANT)In Pro Per,...

JURISDICTION:-

INVOKED. 'ORIGINAL HABEAS
CORPUS JURISDICTION' WITHIN
FEDERAL COURTS.

(EX PARTE BOLLMAN, 8 U.S. (4 Cranch) 75, 95, at
pp. 100-101) (1807) ("Original Habeas Corpus") (Chief Justice -
MARSHALL.) ; (WINGO V. WEDDING, 418 U.S. 461, at 468,
41 L.Ed. 2d. 879, at pp. 885-886, 94 S.Ct. 2842) (1974);
See also, (Casey V. United States, 48 S.Ct. 373, at
376-377, 376 U.S. 413, at pp. 424-425.) (1978)
("To Preserve The Purity of it's Courts"). VIA,
(MR. JUSTICE OLIVER WENDELL HOLMES.)"

Short Title:

ANTHONY ALVAREZ VS. VICTOR M. ALMAGER, Warden,

Court Case No:

3:06-2112-WQH.)

Case No.

1.)

* ORIGINAL *

Proof of Service By MailI am over the age of 18 and a party / not a party (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON (I.D. # V-12145)
2302 BROWN ROAD
P.O. BOX 921,
IMPERIAL, CA. 92251

I served the attached:

NOTICE OF APPEAL & MOTION TO PROCEED IN -

By enclosing true copies in a sealed envelope addressed to each person

+ U.S. Magistrate RECOMMENDATION; 50 Page H/C ...) - FORMA PAUPERIS
whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: July 7TH, 2007NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILEDCLERK, UNITED STATES COURTHOUSE450 GOLDEN GATE Avenue,Post Office Box 36060,San Francisco, California# 94102/3483

I certify under penalty of perjury that the foregoing is true and correct.

DATE:

July 7TH, 2007ANTHONY ALVAREZ,

(TYPE OR PRINT NAME)

V-12145) C-Facility, C-3-111-LCENTINELA STATE PRISON# 92251

(16)

▶ Anthony Alvarez

(SIGNATURE OF DECLARANT)

In Pro Per, ...

JURISDICTION:-

INVOKED 'ORIGINAL HABEAS
CORPUS JURISDICTION WITHIN
FEDERAL COURTS.

(Ex Parte BOLLMAN, 8 U.S. (4 Cranch) 75,
95, at pp. 100-101.) (1807) (ORIGINAL HABEAS CORPUS) (
Chief Justice MARSHALL); (Wingo V. Wedding, 418 U.S.
461, at 468, HILIED. 2d. 879, at pp. 885-886, 94 S. Ct.
2842.) (1974); See, also, (Casey V. United States, 48 S. Ct.
373, at 376-377, 276 U.S. 413, at 424-425.) (1928) ("To
Preserve The Purity of its Courts.") (Mr. JUSTICE -
—OLIVER WENDELL HOLMES.)"

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED
07 JUL 17 AM 10:49
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

Dear Sir or Madam:

Your petition has been filed as civil case number

C 07

3667

Your petition is deficient because:

MMC

(PR)

1. ____ You did not pay the appropriate filing fee of \$5.00. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's In Forma Pauperis Application in its entirety.

2. ✓ ____ The In Forma Pauperis Application you submitted is insufficient because:

✓ ____ You did not use the correct form. You must submit this court's current Prisoner's In Forma Pauperis Application.

____ Your In Forma Pauperis Application was not completed in its entirety.

____ You did not sign your In Forma Pauperis Application.

____ You did not submit a Certificate of Funds in Prisoner's Account completed and signed by an authorized officer at the prison.

____ You did not attach a copy of your prisoner trust account statement showing transactions for the last six months.

____ Other _____

Enclosed you will find this court's current Prisoner's In Forma Pauperis Application, which includes a Certificate of Funds in Prisoner's Account form, and a return envelope for your convenience.

Warning: If you do not respond within THIRTY DAYS from the filing date stamped above, your action will be dismissed and the file closed.

Sincerely,
RICHARD W. WIEKING, Clerk,

By Ms
Deputy Clerk

ALVARO

FILED

07 JUL 17 AM 10:49

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY ALVAREZ,
NAME
V-12145) C-Facility, C-1125-1
PRISON NUMBER P.O. Box 921, C-3-111-L)

CENTINELA STATE PRISON,
CURRENT ADDRESS OR PLACE OF CONFINEMENT

Imperial, California
CITY, STATE, ZIP CODE # 92251

E-Filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

C 07 3667 MMC
Case No. 3:06-2112-WQH.)

Civil No. 3:06-2112-WQH.)
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

ANTHONY ALVAREZ,
(FULL NAME OF PETITIONER)

PETITIONER

v.

VICTOR M. ALMAGER, Warden,

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER (E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS))

RESPONDENT

and

BILL LOCKYER, ESQ.,

The Attorney General of the State of
California, Additional Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:

Superior Court of San Diego; 220 W. Broadway Ave; San Diego, Cal # 92101/

2. Date of judgment of conviction: Sept. 12th 2003.

3. Trial court case number of the judgment of conviction being challenged:

SCD-174061.)

4. Length of sentence: 60-Years To Life.

(1)

5. Sentence start date and projected release date: Nov. 7TH, 2003.

6. Offense(s) for which you were convicted or pleaded guilty (all counts): Two Alleged 1st Degree BURGLARY'S ; with 35 YEARS Enhancements for 30 Plus Years PRIORS. Penal Codes 459/460; 667.5 sub. ds. (b)(1).

7. What was your plea? (CHECK ONE)

- (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- (a) Jury ☒
 (b) Judge only ☐

9. Did you testify at the trial?

- ☐ Yes ☐ No

* COPY *

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

- ☒ Yes ☐ No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: Denied No Hearings
 (b) Date of result, case number and citation, if known: D-043484 — Sup. Ct. No. SCD-174061 (Oct. 27, 2004.)
 (c) Grounds raised on direct appeal: APPELLANTS SENTENCE OF 60-Years To Life IS UnConstitutional Because IT'S DISPROPORTIONATE TO HIS CONDUCT; INEFFECTIVE AID of TRIAL COUNSEL; 30+40 Year old Priors used for Enhancements; Excessive Punishments.

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: DENIED — (Attached)
 (b) Date of result, case number and citation, if known: JANUARY 12, 2005 — None (No System For Correction)
 (c) Grounds raised: Same above (11-c) "Cruel & Unusual Punishments" Article I, Sect. 17, Calif. Constitution; Trial Attorney Failed To Call Identification Experts Testimony Against "EYE WITNESSES"; No Physical Evidence To Place Him in Crime Scene or Entry of Apartment & Issue of "WOBBLE" crucial.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

(a) Result: _____

Not / Applicable

(b) Date of result, case number and citation, if known: _____

(c) Grounds raised: _____

Not / Applicable

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: _____

N/A

(b) Nature of proceeding: _____

(c) Grounds raised: _____

NOT / Applicable

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: _____

N/A

(f) Date of result: _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: Not Applicable
- (b) Nature of proceeding: N/A
- (c) Grounds raised: N/A
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: N/A
- (f) Date of result: _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number: S-136418.
- (b) Nature of proceeding: Original Habeas Corpus (copy Attached)
Allegations PREJUDICIAL THROUGHOUT-NO "FULL DISCLOSURE"
- (c) Grounds raised: INEFFECTIVE AID OF TRIAL COUNSEL-DENIED 6TH & 14TH Amendment "RIGHTS TO FAIR TRIAL" WITH "EQUAL PROTECTION OF THE LAWS" (Collateral Consequences) WRONG-60-Years To Life Sentence-Denied "A Fair and Impartial Appeal", Denied Rights To STRIKE (2) TWO FORTY YEAR OLD PRIORS. !
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: N/A Denied, No Hearings
- (f) Date of result: June 28, 2006 (Copy Attached).

(4)

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

Petitioner Served "Petition For Review" (Proof of Service) Attached:-
Likewise, Copy of HABEAS CORPUS (Attached) Allegations State of California
Demonstrates DISCRIMINATION & PREJUDICE Against Petitioner's Guaranteed Fed...
Constitutional Rights "TO BE HEARD" with Rights To "FULL DISCLOSURE."
(Citations)"

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?
- ☒ Yes ☐ No (IF "YES" SKIP TO #22)
- (a) If no, in what federal court was the prior action filed? _____
- (i) What was the prior case number? _____
- (ii) Was the prior action (CHECK ONE):
- ☐ Denied on the merits?
- ☐ Dismissed for procedural reasons?
- (iii) Date of decision: _____
- (b) Were any of the issues in this current petition also raised in the prior federal petition?
- ☐ Yes ☐ No
- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
- ☐ Yes ☐ No

CAUTION:

DONE in TOTO...

- Exhaustion of State Court Remedies: In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- Single Petition: If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- Factual Specificity: You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

COPIES GROUNDS FOR RELIEF

22. State concisely every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) GROUND ONE: INEFFECTIVE AID OF LEGAL COUNSEL Rights To Fair Trial; Failed Calling Expert IDENTIFICATION WITNESS; Failed To Inform Jurors His Side of Case; DENIED 6TH & 14TH Amendments, Fundamentally TO A FAIR TRIAL.

Supporting FACTS (state briefly without citing cases or law) This was A Case — purely based in (Circumstantial - Evidence) whereby, JURORS needed to recognize the Underlying - Facts, Herein, being (Concealed) by Ineffective Aid of Legal Counsel.

The Case Hing ing upon inaccurate — Not Correct Identification for This: — 'Circumstantial - Evidence' Case; resulting in an OUTRAGEOUS 61-years To Life Sentence!

Allegations: — Upon what should have been (Determined) as "WOBBLEERS", at Best, 'Not Serious Felonies'.

There was No 'Material - Physical' - Evidence of any property Taken By The Defendant, or any Type of Violence! Petitioner was convicted upon [UnReliable] Identification and lacking Adequate Cross-Examination to The crucial facts He had a Right To be in The Apartment-Complex.

IN EVIDENCE CODES: EYE-WITNESS IDENTIFICATION IS THE WEAKEST IDENTIFICATION TYPE OF EVIDENCE!

Given that There was No Physical - Evidence * To Place Him in the Crime Scene; Or, even Any Entry of Apartment in 2ND Charge....

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

See p. 1.

GROUND ONE (Page 1.):

... of Penal Code Section 459.).

Thus, for genuine Due Process In (A Fair Trial) to be satisfied — His Public Defender Mr. BERKON, should have recognized this Great Need FOR AN IDENTIFICATION EXPERTS' TESTIMONY; ON "EYE-WITNESSES" — They EXIST, and are commonly used in a case, such as this — With No Reliable Material Evidence,

Allegations, Lacking such "EXPERTISE" Testimony upon EYE-Witness(s) — IDENTIFICATION — That The Trial, was i.e., Reduced To: "A Farce & A Sham."

* * * The Defendant / Petitioner's side of the case was Never Heard — "THE TRUTH Finding Functions of A Trial" — were NOT Satisfied; Due Process Rights were NOT Satisfied. "His 1ST & 14TH Amendments "Rights — To Be Heard" were Not Satisfied, In,

(STRICKLAND V. Washington, supra, 466 U.S. 668, at pp. 689-690.); (Evitts V. Lucey, 469 U.S. 387, at 396-399.) (1985): ("Totality of Circumstances Shown") — DENIED

* * * His Federal Rights To A Fair Trial — with "FULL-DISCLOSURE" & "Rights To Be Heard." (Citations) & thus, Denied A LEGAL — Sentence. (In re WINSHIP, supra, 397 U.S. 358, at 362-364.) (1970); (LEWIS V. United States, 65 F.3d. 252.) (2nd Cir. (1995); see also, (McMann V. Richardson, 397 U.S. 759, at p. 771 & fn. 14, (1970); (MURRY V. CARRIER, 477 U.S. 478, at p. 496.) (Allegation: — THE STATE'S CONDUCT — IS — DISCRIMINATORY / PREJUDICIAL THROUGHOUT.)

(Federal Constitutional Rights for Due — Process are Disregarded.)

(mt) p. 2.)

(1)

see p. 2.)

GROUND ONE (Page 2.) :-

WE CITE LEGAL Authorities Throughout
 * * * TO Illustrate Calif. SUPREME COURT
 * * * And It's COURTS Dis Regard Federal
 Constitutional Rights & Authorities For
 Granting Due Process. (DISCRIMINATION.)!

// // // Defendant / Petitioner Had Every Right To Be
 at This Apartment Complex on the Date of His
 Arrest. The True FACTS were (concealed from
 JURORS) :- His EX-GIRL FRIEND (EASTER YARBORDUCH)
 who had lived with Him, At this Apartment Complex.
 She had introduced Defendant To A Male Friend of
 Hers - who lived in a seperate Section at this
 Same Apartment Complex. This Defendant / Petitioner
 was trying to make a connection with that Man
 to share an Apartment.

* AT This Point In Time, Defendant was
 gainfully employed as A TELEMARKETER, and had
 worked at that JOB for 14-Months.

Petitioner / Defendant, was Denied His Funda-
 -mental-Rights To 'A Fair Trial, Via, SIXTH and
 Fourteenth Amendment(s), Violated & Lacking (sine-
 qua non) any "FULL DISCLOSURE" - His Side Of The
 Case was Not Presented To JURORS. (United States
 V. NIXON, 418 U.S. 683, at p. 709.) 94 S. Ct. 3090. (1974);
 (Gray Vs. Mississippi, 481 U.S. at 668. (1987); See also,
 (Speiser Vs. Randall, 357 U.S. 513, at 525-526, 78 S. Ct.
 1332, at 1342-1343.); (In re WINSHIP, supra, 397 U.S. 358,
 at 364 and 372.) ("Colorable Claim Of Innocence"). Alleging :-

U. S. *
District Judge William Q. HAYES, ESQ.,
(WQH)

Petitioner's (All of Them) His guaranteed
LEGAL AND "Human Dignity"-Rights are Dis Respected
No Respect Granted By Court Officials (of The State.) See,
(Harris V. New York, 401 U.S. 222, at 224-228, & at 230-
231-232.) (1971). "The Constitutional Foundation Underlying
The Privilege Against (Self-Incrimination) is The Respect
A Government * * * MUST ACCORD TO THE DIGNITY
AND INTEGRITY OF ITS CITIZENS." (IBID.); See also, (Mapp
V. Ohio, supra, 367 U.S. 643, at 659, 81 S.Ct. 1684, at 1694,
6 Ed. 2d. 1081.) (1961); see also, 28 L. Ed. 2d. at 8; 401 U.S. 232.) (1971)

GROUND ONE Page 3.):-

• • • The State Did Not Carry or Satisfy Their —
"Burdens of Proof." None of which was Adequately —
 Addressed at The Trial or at Sentencing for
 it's merits.); see, (McMann Vs. Richardson, Supra,
 397 U.S. 759, at 771 fn. 14.) (1990); See, "1st Amendment,
 — RIGHTS TO BE HEARD." in, (Goss V. Lopez, 42 L. Ed. 2d.
 at 734-735, & 737 (& Case LAW cited) 419 U.S. at 574 —
 575, 95 S. Ct. 729.) (1975); (Grannis V. Ordean, 234 U.S.
 385, at 395. (1914) (cited with Approval.). When Petitioner
 is fighting Against Official Discrimination / PREJUDICE
 * * * obstructing His Due Process Rights; "RIGHTS
 — TO BE HEARD" 1st & 14th Amendments Violated.

Evidenced Via, No Required Hearings Granted!
LACK OF RESPECT FOR
HIS HUMAN DIGNITY.

Due Consider The Judges Decision in, (LaReau V. —
 MacDougall, 473 F.2d. 974, at p. 978 & fn. 7.) (2nd Cir. 1972) Quote:-

Page 978: "Prison Officials, no less than Sentencing
 Judges, are Bound by The Strictures of the Eighth
 Amendment. Disciplinary measures:- That Violate
 Civilized Standards of Human Decency are —

proscribed. * * * * In Order To preserve the
 Human Dignity of inmates and the standards of
 Humanity embraced by our Society, we CANNOT
 Sanction such punishments." See, (Trop V. Dulles, —
 Supra, 356 U.S. 86, at 101.) (Id. at 978, & fns. cited). "

P. 978:- "And The "Conscience" (8th Amend.) of The Clause
 is concerned with is the Collective Conscience of Our.....

USURPATION OF THE LAW, JUDICIAL
PROCESS, are The Egregious ERRORS —
Herein, Consider Facts:- "STONEWALLING-
THE LAWS" ipso facto, is conduct in
THE USURPATION OF THE JUDICIAL PROCESS !!

F.R.C.P. Rule 52(b) We Have shown "Plain ERRORS"
Demanding The "Public Light" for RESTORATION
of Our American System of JUSTICE

Federal Rule 52(b) "Plain ERRORS" or Defects Affecting
Substantial Rights! are viable ...

GROUND ONE (Page 4):-

... our Society, Not The Conscience of Judges or Prison Officials as individuals. See, (Trop v. Dulles, supra, 356 U.S. 86, at 101.) (1958) (Id. at 978 & fn. 7)."

* * * ALL of the above facts is in Reference To The Disproportionate Sentence of 61 yrs. To A Man who is 75 yrs. old; having A Mother of 98 yrs. who needs Him. !!

Even Calif.'s LAW grants to Him A Hearing. The State Failed To Grant Him His 1st Amendment Rights — To Be Heard. WE claimed His 61 yrs. Life Sentence of residential Burglary was Very UnConstitutional because it is so Disproportionate To His Conduct it — "Shocks the Conscience" and offends fundamental — nations of Human Dignity." (In re Lynch, 8 Cal. 3d. 410, at 424.) (1972). And Cases in Accord...."

* * * Petitioner's Trial Counsel Failed To Investigate The Facts or present Them (Absent) those Omissions and Trial ERRORS by His legal Counsel, The results of The Trial would have been different. He Failed To Defend His Clients Fundamental Constitutional Rights. See, cf., (In re Huffman, 42 Cal. 3d. 552, 229 CR. 789.) (1986) ("Misinterpretation of Statute LAWS" — & Confinement in EXCESS of THE LAW —

"LACKING FUNDAMENTAL-FAIRNESS.") Via, (STRICKLAND, supra, 466 U.S. at 668-686, & 690.). PREJUDICE Cf., (Brown v. Mayle, 283 F.3d. 1019.) (CA. 9th Cir. 2002) (Disproportionate Sentence.)"

* (His TRUE Reputation Issues:- End of GROUND ONE. Cont.)
He IS A Highly Decorated WAR Veteran (KOREAN WAR) (1950-1953) Against COURTS PREJUDICE ... etc....

END of GROUND ONE:-

* COPY *

(b) GROUND TWO: CONVICTION NOT RELIABLE - BURDENS OF PROOF - NOT SATISFIED (SPEISER VS. RANDALL); (IN RE WINSHER, Supra.). STATE DID NOT RESOLVE FACTUAL ISSUES ON THE MERITS.) No Full, Fair, Fact Finding Hearings,

Supporting FACTS (state briefly without citing cases or law):

EXCESSIVELY -

HARSH PUNISHMENTS; Due To Facts, Even (IF) Guilty -

The Factual-EVIDENCE Reasonably Seen are

MISDEMEANOR - EVIDENCE' At Best!

EXACERBATING - MISDEMEANOR - EVIDENCE'

in to "SERIOUS FELONIES" is the USURPATION of

A JUDICIAL PROCESS - Thus, 'The Spirit of THE LAW

is ABSENT. It is Profanation. . . .

"THE SPIRIT OF THE LAW - IS WHAT DICTATES JUSTICE" (JUSTICE, SANDRA DAY -

O'CONNER.) United States Supreme Court.

Likewise, is The Legal Principle 'Done In The Best Interests Of JUSTICE' - Dictates TRUTH. . .

. . . OF JUSTICE, being Done.

Herein, Lacking Effective Aid of His LEGAL Counsel - results in 'One-Sided Proceedings.

Profaning "The Truth Finding Functions of A JURY Trial" - The Uninformed JURORS

were under (Profanation) in these ONE-SIDED

PROCEEDINGS - Lacking genuine Cross -

Examination of Witness - The Trial was reduced

To 'Farce & Sham' Proceedings. (Throughout.)

THEREFORE, The State Has No Factual Reliable-Evidence, To call either of These Charges "Serious-

Felonies"!! Petitioner was convicted on. . .

(Cont. Page 1)

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(7)

GROUND TWO, Page 1.): -

.....His Past Record - Under PASSION, and PREJUDICE (STATE RECORDS show TWO PRIORS are 40 years past, and another was 36 years Past - Time Served No Violence! Under UnReliable Factual Evidence - He, ^{SENTENCED TO} WAS 60-Years TO Life Sentence (CS) as are Merits/Grounds of Prejudice with "EXCESSIVE-PUNISHMENTS" - Creating facts of "Cruel And Unusual-Punishments."

Which were gained under UnReliable Fact Finding' -
 - JURORS Never Heard True Facts as explained -
 in GROUND ONE: - Herein, alleging with Ineffective legal Counsel & WRONG Unlawful Sentencing, -
 EIGHTH & FOURTEENTH Amendments, Sections 1, & 2, violated, With No Fundamental-Fairness" (sine qua non.) Shown in these proceedings. A One-Sided Trial By Prosecution and a wholly Disproportionate Sentence Via, "Shocking The Conscience" in Case Law, (In re LYNCH, supra, 8 Cal. 3d. at 424.), "and Which Offends fundamental notions of Human Dignity." (Id. at p. 424.). His Trial Lawyer Failed To Do Any Investigation, and Failed To Seek Assistance of an IDENTIFICATION EXPERT' - A Very crucial ERROR' -
 - Denying His Fundamental Rights (Reasonably) to "A Fair -
 - JURY TRIAL", herein lacking 'TRUTH FINDING FUNCTIONS -
 - OF A TRIAL' - A Requirement By His Past -
 - Convictions!!

On the Second Charge one month later where He was arrested - Whereby, He NEVER Entered.....

GROUND TWO, Page 2.):-

....that Residence Apt. — The Judge LAURA HAMMES, Told the JURORS That putting any part of your Body into The Apartment is a 1st Degree Burglary??

* * (Remember That, mere conduct The State Tacked on —
* 30 more years on His Sentence — That's Not Lawful —
— it is Shameless Conduct.) (Truth Be Told):- "

FACTS in This Case, His Hand Reached into open — window To Push Back The Blinds (of Bedroom), and He called out, "Are You Awake?" No Answer So — He Left! Check:- The PREJUDICE Here:-

* * THE PROSECUTION EXACERBATE(S) Those (above) Facts, and Blatantly LIES TO THE JURORS!!
Falsely claims The Defendant Ran Off??

Defendant NEVER RAN OFF — — — His LEGAL Counsel (Mr. BERKON) NEVER Objected To Those (LIES), nor, To [ANY] PREJUDICIAL TESTIMONY!

Worse, (Mr. BERKON) NEVER INFORMED JURORS of The TRUE FACTS of WHY Defendant was at The HILCREST Apt. COMPLEX — Was To Find A Friend. Defendant and His GIRLFRIEND (ESTER)

Lived There at 4053 8th Avenue, Apt. No. 43, San Diego, Cal.

* * Moreover, that (Concealment) Allowed Prosecution To so Manufacture His — Circumstantial — EVIDENCE — Case' — EXACERBATING THE FACTS' ("Un EQUAL Hand — of Justice") (Citations)" Taking Supreme Advantage over such Defenseless Man (DisRegarding) His Human Dignity....

GROUND TWO, Page 3.) (Insert Page):-

His Reputation ISSUES:-

FOR DEFENDANT'S / PETITIONER'S HIS
TRUE REPUTATION IS DUE CONSIDERATION;
AGAINST TRIAL COURTS PREJUDICE, ET AL.:-

* * * (KOREAN WAR) (1950 to 1953)
Petitioner would appreciate This Honorable —
United States District Court, To Be Aware & Understand
— that He Served & Fought For His Country — Honorably.
FACTS:- That He is A Decorated WAR Veteran.

(Service No. 384-12-78).

He was in Boot Camp in 1950 at The Naval
Training Center When The Korean War Broke Out.

Petitioner was assigned to The U.S.S. UNION —
(AKA) 106 (An Attack Cargo Transport.) While overseas
in Japan, He applied for U.D.T. (i.e., Under Water
Demolition Team Training.) Petitioner passed His 4-
Months of Training at Coronado (Amphibious Base),
and He Became A U.S. NAVY FROGMAN in TEAM 4.

Our Team 4, saw action in KOREA, and WE
Received The PRESIDENTIAL UNIT CITATION; HE
ALSO, Received A GOOD CONDUCT RIBBON, and AN
Honorable DISCHARGE (Served) from 1950 to 1955.)

If you choose Verification The F.B.I. will
Confirm. Service Number 384-12-78.)

Verification

(Insert Page) Between Pages 243) —
— of GROUND TWO!

Federal Habeas Corpus Case No. 3:06-2112-WQH)

GROUND TWO, Page 3.):-

... With EXTREME PREJUDICE - Egregiously mis-using His Long past CRIMINAL RECORD.

Where, Therein, His Past ACCUSERS Did Have Reliable Evidence! Check:- Herein, There exists No-Reliable Facts or, Material-Evidence - To Support The Record. No Breaking and Entry; No Relevant, — Material-Evidence; and No Violence Involved!

* * * (The State Appellate & SUPREME COURTS Failed To Acknowledge such Facts of (UNEQUAL JUSTICE!) or MOB — Rule as in (Moore V. Dempsey, supra).

Likewise, The 2nd (Alleged) Penal Code Sect. 459, Conviction, did NOT Satisfy any Reasonable Test, of 1st, Degree Burglary — No Entry; No Property Taken on April 10th, 2003 - APT. #27, San Diego. NO VIOLENCE. Nor, any Physical Injury To ANYONE. (He was Sentenced 30-Years (CS) upon such flimsy UnReliable Evidence.)!

Moreover, It is A LEGAL, and A MORAL OUTRAGE! TO SENTENCE Petitioner to 60-Years (CS) To Life, (BECAUSE OF HIS PAST.)!

Moreover, Allegations are, That This OUTRAGEOUS UnConstitutional Sentence are i.e., EX POST FACTO Violations of Due Process, and Lack of Fair, Impartial Sentencing.

* NOTICE:- He will argue (Issue) These EX POST-facto grounds Separately! (cont.). . . ."

The RECORD Here & with 'Extreme Prejudice' appears to be as "Under pervading influence of The — MOB" — Denied Him His Federal Constitutional — Rights To A Fair Trial, (Moore V. Dempsey.) supra,...

GROUND TWO, Page 4.):-

... (Moore, cited with Approval). In, (Peyton V. Rowe, 83 S. Ct. 1549, 391 U.S. 54, at 56 & 60, 20 L. Ed. 2d. 420, at 426, - at 428 & 430.) (1968) Whereas,

HEARINGS ARE MANDATORY:-

(Above Case LAWS Grants):-

"Opening The Door Of Inquiry":-

Petitioner is forthwith Challenging 1st Amendment Violations LACK of "FULL DISCLOSURE"; That The State Failed To Satisfy Their "Burdens of Proof" for Any 1st Degree Burglary Conviction in Both P.C. 459 Charges. The Lack of genuine Due Process at Trial, in Appeals, and Denied Habeas Corpus Relief!

ALL Rights pursuant to:- "EQUAL PROTECTION OF THE LAWS" are i.e., violated. (United States Vs. Nixon, supra, 418 U.S. at p. 709. (1974); (Speiser V. Randall, - 78 S. Ct. 1332, at 1342-1343, 357 U.S. 513, at 525-526.).... and cases in Accord.).

* * * Under These Extra-Ordinary Facts of Extreme Prejudice (Disregarding) Federal Constitutional Rights By All State Courts in this Case; Alleging 'Abuse of Process' — EXCESSIVE PUNISHMENTS, amounting to Eighth Amendment ^{Violations}, Under UnReliable Fact Finding; ; Alleging The State provides No Corrective Process for such ... fundamental Constitutional Rights Violation(s).

HEARINGS ARE MANDATORY:-"OPENS THE INQUIRY."

Under, (Peyton V. Rowe, Supra, 20 L. Ed. 2d. 420, at pages 426, 428, 430, 391 U.S. 54, at p. 56 & 60.) (1968), cases in Accord.).

GROUND TWO, Page 5:)-

Page 428 :- "This case concerns The Scope of 28 U.S.C. Section 2241(c)(3), which specifies that The United States District Courts may issue Writs of Habeas Corpus on behalf of prisoners who are "in custody in violation of the Constitution . . . of the United States." (Id. at 428, 391 U.S. at 56.)"

Page 430 :- "At least tentatively, in (Frank V. Mangum, 237 U.S. 309, at 330, 331, & 346, 59 L.Ed. 969, at 981, 35 S.Ct. 582.) (1915); and more clearly in, (Moore V. Dempsey, 261 U.S. 86, at 91, 67 L.Ed. - 543, 43 S.Ct. 265.) (1926). "This Court had Recognized That a District Court was authorized to Look behind The bare Record, of a Trial Proceeding and conduct a factual hearing to determine the merits of alleged deprivations of Constitutional Rights, & fn. 14. (emphasis supplied) (Opens The Door of Inquiry). . . (Id. at 430, 391 U.S. at p. 60.)"

* * * Moreover, We believe it is in Petitioners and The Public/People's Best Interests, To Address these Substantive Issues The Underlying Facts' and ABUSE & misuse of "THREE STRIKES LAWS" - with EIGHTH - AMENDMENT'S Violations, upon The Personal Loss Of Liberty Interests of Petitioner Via, NO FAIR TRIAL; NO Impartial Appeals; and NO Corrective Process * in Calif.'s Supreme Court Failing to secure any of His guaranteed Fundamental Constitutional Rights.

Calif. SUPREME COURT, Habeas Corpus (Attached hereto)... Evidence No Fair Trial EXISTS, nor Appeals, NO FULL,

GROUND TWO, Page 6):-

....No Fair, Fact Finding Hearings, were Allowed.
See, (Townsend V. Sain, 372 U.S. 293, at pp. 312-313.) (—
(Sub. divs. 1 to 6.) (1963). Mandatory....

Allegations :- "The Totality Of Circumstances" —
presented in this Instant Case, Compel A Determination
that this Potential Life Sentence imposed for Two
Counts of Residential Burglary with (UnReliable-
Identification) is DISPROPORTIONATE TO THE CRIME
("Shocking The Conscience") (Citation Cited); And THEREFORE,
Constitutes "Cruel and Unusual Punishments;" In
Violation of Article I, Section 17, of The California
Constitution and (Trop V. Dulles, Supra, 356 U.S.
86, at p. 101, 2 L.Ed. 630, at 641, 642, 643.) (1958). CRIME

Petitioners Conviction must THEREFORE, Be Reversed
In The Best and TRUE Interests Of Justice."
END of GROUND TWO. Also,

See, THE SUPREMACY CLAUSE:-

"The Federal CONSTITUTION IS THE SUPREME
LAW OF THE LAND." (Article III, Section 1, of
The California Constitution; Article VI, Section 2,
The United States Constitution.)

(Page 6)

Cont.) :- See,
GROUND THREE,

* 00 PV *

(c) **GROUND THREE:** DENIED HIS RIGHT TO STRIKE (2)
 FORTY YEAR OLD PRIORS; AND 30 YEAR OLD PRIOR;
 PENAL CODE SECTION 1385 (A) IN BEST INTERESTS OF JUSTICE.

Supporting FACTS (state briefly ~~without~~ citing cases or law): Deliberate
INDIFFERENCE our Federal Rights Secured in Due Process,
 and "EQUAL Protection of THE LAWS (Charges) & (sine qua non)"
 for The "Fundamental-Fairness."

Without the element of PREJUDICE, "The COURT
 Has The Power and Discretion to, 'Strike PRIORS
 IN THE INTERESTS OF JUSTICE'; P.C. Section 1385 (A).

Moreover, (Instant Case) under These flimsy
 UnReliable Identification FACTS — With such —
 "Insufficiency of The Evidence — With Non-VIOLENCE,
 No Injury To Parties." In, (People V. Superior Court,
 (ROMERO) 13 Cal. 4th, 497 at p. 508, 53 Cal. Rptr.
 784, at 793.) (Citing with Approval): — (People V. Burke,
 47 Cal. 2d. at pp. 50-51, 301 P. 2d. 241.): — "Instead,
 The Order Striking such allegations simply
 embodies This Court's determination That,
 "In The Interests of Justice," Defendant should
 NOT be required to undergo a statutory
 increased penalty which would follow from
 Judicial determination of [The Alleged] Fact." (Id.
 at p. 50, 301 P. 2d. 241.) (Burke) (Id. at 793, 13 Cal. —
 4th, at p. 508.) (ROMERO)." & DISREGARDED Herein,

The Superior Court & Court of Appeals,
 4th, Appellate District & Calif. SUPREME COURT Should
 have REDUCED The Current PRIORS — Felonies To: —

Did you raise GROUND THREE in the California Supreme Court?

(cont.)...

☒ Yes ☐ No.

(8)

GROUND THREE Page 1):-

.... to "WOBBLERS" Offense (Reasonably) To Misemeanors' upon The Facts (And Underlying Facts) Under Penal Code Section 17(b). Allegations:- California SUPREME COURT failed to consider Due Process, with Compassion, and Mercy nor, any Acknowledgements of "The Spirit of The LAW, WHICH DICTATES JUSTICE". (Citations.)"

In, (Garcia, 20 Cal. 4th, 490, at 500 to 503.) Whereas, (The Defendants/Petitioner's History Does Not Include ANY Actual Physical Violence.) (Id. 500-503.)"

*** State Courts per se' Failed (to even consider) TO STRIKE Mr. ALVAREZ'S Pen. Code Section 211, "In The Interests of JUSTICE." For A Variety of REASONS. The First Being Mr. ALVAREZ'S PRIORS — Are Far too Remote in Time!

The First two Robbery Convictions alleged as STRIKES, are 40-Years Old, occurring in 1965! The Third Strike PRIOR Robbery Conviction is 36 Years Old, occurring in 1970! Especially, with Insufficient Evidence and lack of A genuine, A Fair Trial, are Rational REASONS For STRIKING His 40 Years Old Priors, ... and His 35 Year old Prior — Convictions Truly! In The Best Interests of Justice.

Issues of Humanity & Human Decency!

In GROUND ONE, we raise The Issue of This One-sided Trial and Calif. Court(s) Not showing any justified concerns for The Petitioner's 'Human Dignity' with Human Decency — The Disproportionate Sentence — Should "Shock —

(1)

see p. 2)

GROUND THREE, Page 2):-

....The Conscience" of ANY Reasonable, Rational People, in A Civilized Society. Giving any 75-Year Old Man — a SIXTY YEAR (CS) Sentence To Serve, Offends Human Decency (Unwarranted By His Conduct — would be * Seen as, "Cruel and Unusual - Punishments" — cannot be Justified by Defendants / Petitioner's Conduct.

Herein, the Petitioner Likewise, in Townsend Case, He Has Been Denied ANY Corrective Process, (Cf.) To Correct * * * What is Materially - False — Consider what SUPREME COURT Determined. In, Cf., (Townsend V. Burke, 334 U.S. 736, at page 741, 68 S.Ct. 1252, at 1255, 92 L.Ed. 1690, "The Supreme Court struck down A Sentence whose duration was predicated upon materially false factual Conclusions drawn by The Trial Judge:-

"It is not The duration or severity of This Sentence That renders it Constitutionally Invalid:-

* * * — It is The careless or designed Pronouncement of a Sentence on a foundation so extensively and materially false" — Which The Prisoner Had No Opportunity To Correct — by the Services which Counsel would provide, that renders The proceed- ings Lacking in Due Process." (emphasis supplied) (334 U.S. at p. 741, 68 S.Ct. at 1255.) Cited in, (Soloman, 422 F.2d. 1110, at pp. 1120-1123.). We, Claiming Throughout These GROUNDS & Facts The States Conduct — Throughout — * renders it all Constitutionally Invalid et cetera, etc.).

Moreover, there is an Extreme Hardship Put upon The Petitioner with These Deprivations...

(2) see, 3.)

GROUND THREE, Page 3.):-

...of His Fundamental Federal Constitutional -
 - Rights' with this (Alleged) (Illegal 60-Years Sentence)
 without Reasonable Cause' - as Explained in GROUND
 ONE, Page 4. We are dealing with a 75-Year Old -
 - Man - falsely convicted - Whom Has A Mother!
 Who is 98-Years of Age - Who desperately Needs
 Her Sons assistance Now! Also, He is A Decorated Veteran...
PAUSE:- ... (Korean WAR "

" PETITIONER'S Potential LIFE SENTENCE
 For Two Counts Of Residential Burglary'
 IS "UNCONSTITUTIONAL" BECAUSE IT'S SO -
 DisProportionate To His CONDUCT That IT :-
 "Shocks The Conscience" and Offends Our Funda-
 -mental Concepts OF Human Dignity.".....
 (In re LYNCH, supra, 8 Cal. 3d. 410, at 424. (1972)."

END OF GROUND THREE.COUNTERPOINT:-

Cf., In, (BROWN'S V. MAYLE, COURT'S CONCLUSION p. 1040.)
 In said CONCLUSION, WE are only (Emphasizing Same)!
 "25 Years To Life Sentence" Determined as Violating
 EIGHTH Amendments Prohibitions Against 'Cruel
 and Unusual Punishments', "GROSSLY DISPROPORTIONATE"
 To His Conduct." (Id at 1040.) (BROWN V. MAYLE, 283
 F. 3d. 1019, 1025, at 1039-1040 - CONCLUSION. CA.
 9th, Cir. 2002.). "

END OF GROUND THREE.

COPY

(d) **GROUND FOUR: UNCONSTITUTIONAL APPLICATION OF '3-STRIKES LAW' TO PRE-1994 PRIORS; ARE EX POST FACTO VIOLATIONS (AGGRAVATIONS); And EIGHTH AMEND. VIOLATIONS.**

Supporting FACTS (state briefly without citing cases or law):

Petitioner is NOT Alleging That The California 'THREE STRIKES LAW' IS AN EX-Post Facto VIOLATION By way of "Increasing The Term Of Imprisonment" Of A Prior Felony Conviction. Petitioner is Affirmatively Alleging (A) 3-STRIKES LAW AGGRAVATES A Crime, or makes it Greater Than The Past - When it was - committed, - By Determining That The Aspect Of a Prior Crime, Which Constitutes A Previous Conviction & (Time Served), Is now more serious & Requires Greater Punishment - Under New Law is our Issue... Or it (B) it changes The Punishment - [To That Aspect Of The Prior Felony, - Which Is ... Punishable For Being A PRIOR FELONY CONVICTION], Than The LAW ANNEXED TO The Crime, When Committed; And (C) "ALTERS THE LEGAL Rules Of Evidence and Receives or Requires Different Testimony & Facts Than, The LAW Required, at the time of the Commission of the Offense, in Order To Convict the Offender." See (Calden Vs. Bull, 3 DEL. 386, at 390, 1 L. Ed. 648-650.) (1798); - (LYNCE Vs. MATHIS, 117 S. Ct. 891, at 896-898.) - (1997); Citing: (WEAVER Vs. GRAHAM, 450 U.S. 24, At pp. 30-32, 101 S. Ct. 960, 966, 67 L. Ed. 2d. 17.) (1981); & "Lacking Fundamental-Fairness" requirements....

Did you raise GROUND FOUR in the California Supreme Court?

☒ Yes ☐ No.

**TAKE JUDICIAL
NOTICE: →**

(9)

ADDITIONAL PAGES (FVI):

Federal Constitutional Rights
1st, 5th, 8th & 14th AMENDMENTS.
... Violations.

(Cont.): -

GROUND FOUR, Page 1.) :-

... in The Fourteenth Amendment, Consider :-

THE THREE STRIKES LAW (Cal. P.C. Section 667, SUB. - DEVS. (B)-(i) Provides That If A Defendant Has One PRIOR Serious or Violent Felony, The Prescribed Sentence is "Twice The Term Otherwise Provided - A Punishment for the current Felony Conviction"; And IF The Defendant Has Two or more PRIORS - Qualifying Felonies The Prescribed Sentence "Is An Indeterminate Term of LIFE - IMPRISONMENT."

Whereas, The Additional Terms for previous Felony Convictions were between Two and Five Years; Prior To The Enactment OF THE 'THREE STRIKES LAW.'
 *** Petitioner ALLEGES That This Violates The Proscription Against Creating Ex Post Facto Law, By State Court [Aggravating] The Seriousness of, And Inflicting Greater Punishment, Than THE LAW ANNEXED TO That Punishable Aspect Of The Offense which constitutes Being such A previous conviction. This weight of the PRIOR Conviction, as Evidence in The - (Instant) Convictions is Also Being Increased...

Whereas, The Evidence of The PRIOR Conviction, mandated an additional Punishment of Two, To Five Years Before 'THE THREE STRIKES LAW.

*** THE PAST EVIDENCE IS NOW Mandating AN Additional PUNISHMENT OF EITHER Double The Sentence, or LIFE IMPRISONMENT.

This factor Increases The Defendants Culpability

(1)

See, p.2.)....

GROUND FOUR, Page 2.):-

...for having A Prior Offense, After it was already determined to be A Culpability Requiring! (Only AN) Additional Prison Term of Two To FIVE Years, at the Time of Commission.

As We Recognize In, WEAVER, supra, ...
This RETROACTIVE Application Of (THREE STRIKES LAW) that governs initial Sentencing, Implicates The EX-Post-Facto, Clause (AGGRAVATES) THE SENTENCE INCREASING PUNISHMENT. (IBID.) (LYNCE Vs. MATHIS, supra, 117 S.Ct. at 891-898.) (1997), Citing:- (WEAVER, supra, 450 U.S. At 30, 32, 101 S.Ct. at 966, — 67 L.Ed. 2d. 17. (1981)."

The State Courts and it's Supreme Court Disregarded Petitioners Federal Rights, Article III, Section 1, California State Constitution...
UNIFORMITY OF LAWS CLAUSE.

No Mandatory Hearings (sine qua non.) served IF The Legislature Had Determined That The 'THREE STRIKES LAW' was applicable prospectively leaving All Pre-1994 PRIOR Offences with Their Original two to five year Enhancements Attributes, The Question of Their 'FAIR NOTICE' would Not Come into Play. However, when applied Retrospectively, so that even Two Misdeemeanors can Result in LIFE IMPRISONMENT.

* * * THE DEFENDANT IS DISADVANTAGED By such A Change IN THE LAW FOR SOMETHING HE HAS NO Power to UNDO. Violates Due Process.?
Q:- IF THE STATE CAN ARBITRARILY CHANGE THE LIABILITY FOR THE FACT OF A PAST ACT TO....

GROUND FOUR, Page 3.):-

.....LIFE IM PRISONMENT; Then The State CAN ARBITRARILY INCREASE IT TO A DEATH PENALTY.?

(THINK About it.) That is NOT A JUSTICE SYSTEM.

See, JUSTICE CHASE, In, (CALDER, Supra, at — at pages 390-391.) EVERY LAW That Takes AWAY, Or, Impairs Rights Vested — Agreeable TO EXISTING, LAW Is Retrospective, and is Generally Unjust, and may Be Oppressive; and it is a good — General Rule, That A LAW Should Have No Retrospect....."

HEREIN (PRIORS) OFFENCES (INSTANT CASE)
The Previous (PRIORS) Offences That were FORTY, And THIRTY Years Past Have Been Used, And, AGGRAVATED, Also, OF PUNISHMENTS INCREASE To an (OUTRAGEOUS) SIXTY YEARS TO LIFE SENTENCE!

Allegations:- Which is A LEGAL, and A MORAL OUTRAGE in view of The Facts — Where THE STATE DID NOT CARRY (Satisfy) Their legal "BURDENS OF PROOF" relying upon UnReliable EYE-Witness — No genuine or Adequate Cross EXAMINATION of *Witness — No reliable Material-Evidence of RECORD — The Jurors "Hood-Winked" By Prosecutor & The Judge resulting in Wholly — DISPROPORTIONATE Sentence Via, The Facts & manufactured evidence used.

For These REAL REASONS & CAUSES Petitioner Pledges That The 'THREE STRIKES LAW' under *these Specific-Facts, Increasing & (AGGRAVATING) — The Sentence Violates The Constitutional Prohibition Against EX POST FACTO LAWS. Art. I, Sections 9 & 10, U.S. Constitution.

GROUND FOUR, Page 4.):-

ABUSE OF PROCESS, FOURTEENTH AMENDMENT.

Use of Explicit, and Mandatory Language in —
The Penal Code, has created such 'LIBERTY —
INTERESTS' For The Petitioner, and Enhancement —
Terms of Only Two To Five Years For PRE-1994' —
Previous convictions. The 'Three STRIKES LAW'

Has Increased Tolls Terms Constituting such
Arbitrariness, and By The State. It is well
established that mandatory statutory language
creates A Liberty Interest. Stated simply,

* * A State creates a Protected Liberty' by Replacing
* Substantive Limitations On Official Discretion.

(Kentucky DEPT. OF CORRECTIONS VS. THOMPSON, —

490 U.S. 454, at 462, 109 S.Ct. 1904, at 1909, 104
L.Ed. 2d. 506.) (1989), citing:— (OLIM VS. WAKINE KONA,
461 U.S. 238, at 249, 103 S.Ct. 1747, 75 L.Ed. 2d. 813.)

(1983); AN IN ASSOCIATED DECISIONS; BOARD OF —

PARDONS VS. ALLEN, 482 U.S. 369, S.Ct. 2415, 96 L.Ed.
2d. 303.) (1987); (Green HOLZ VS. Nebraska Penal In Mates,

442 U.S. 1, 99 S.Ct. 2963, 41 L.Ed. 2d. 935.) (1974); (VITEK VS.

Jones, 445 U.S. 480, 100 S.Ct. 1254, 631 L.Ed. 2d. 552.) (1980);

; (Hewitt V. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L. —
— Ed. 2d. 675.) (1983)." The above & below legal Authorities

* are Protections that THE LAW Affords To Every Citizen,
Esp. to Prisoners. This Doctrine Finds Expression
in several provisions of our United States Constitution.

The EX POST FACTO CLAUSE FLATLY —

(H)

see p. 5)

GROUND FOUR, Page 5.):-

- Prohibits Retroactive Application OF Penal -
Legislation... Article I, Sections 9 & 10, Clause, -
Prohibits States From Passing Another Type
of Retroactive Legislation, LAWS, Impairing The
Mandatory Obligation of Contracts & for Due Process).

THE FIFTH AMENDMENTS 'TAKING CLAUSE'
Prevents the Legislature (And other Government
Actors) From Their Depriving Private Persons
of their "Vested LEGAL", and Property Rights (Citations).
The Provisions on BILLS OF ATTAINDER, In Article
-I, Sections 9, and 10, Prohibits Legislators from
* Singling out 'DISFAVORED PERSONS', And their!
Meting out Summary Punishments For Past -
Conduct! See e.g., (United States Vs. Brown, 38 U.S.
437, at 456 to 462, 85 S. Ct. 1707, at 1718-1722, -
14 L. Ed. 2d 484.) (1965)." Mark Time...!.....

* * * In The Best Interests of JUSTICE, There
Must Be Attributes Of Compassion and Mercy,
and UNADULTERATED TRUTH, IN SENTENCING!

In Order to Satisfy THE SPIRIT OF TRUTH, and
EQUITY. (MENS LEGIS)! (None Of Which Appears,
IN THIS PREJUDICIAL & DISProportionate Sentence.

(TRUTH BE TOLD): MARK TIME :-

* * * Mr. ALVAREZ i.e., IS A POSTER
CHILD, FOR ALL That IS WRONG;
IN SENTENCING UNDER 'THREE STRIKES
LAW' Via., TURNING "WOBBLERS" -
MISDEMEANOR FACTS AND EVIDENCE

GROUND FOUR, Page 6.) :-

..... INTO FELONIES.....

OVERWHELMING PREJUDICE!NOT Serving ANY Public's Interests,

|| || ||

The TRIAL, and Sentencing Judge —
 LAURA R. HAMMES, Erroneously tries to
 *Justify Her LACK of ANY Humane Compassion
 allegedly acting in HER Self-Righteousness, and
 PREJUDICE, perverting THE TRUTH, Claiming The Petitioner
 Mr. ALVAREZ, "Is 'A POSTER CHILD' FOR THE
 'THREE STRIKES LAW', Which is The EVIL, and
 WRONG ATTITUDE for A Judge — Not Objective, nor Legal.
 "IT Appears She Loves the "Evil-EYE" & Un Equal —
 — Hand of Justice". (Wong Sun V. United States, 371
 U.S. 471, at 487 & 488, 491.) (1963) And Cases in ACCORD!

PETITIONER, TAKES THE CORRECT OPPOSITE
 VIEW and Righteous Position! As A Righteous
 Expression of What :-

* * * "EQUAL JUSTICE UNDER LAW" (MEANS):-

* * * Thus, Mr. ALVAREZ, is A POSTER CHILD,
 EXACTLY FOR ALL THAT IS WRONG in Unequal
 Provisions, In, "THREE STRIKES LAW". Some
 Specific, ERRORS, and ABUSES, Serving — NO
 Public Interests, & No Penological Objectives. served....

* Petitioner's case is An Example of what is so
 Terribly WRONG, and Missing in this Present —
 "THREE STRIKES LAW." (No corrective Process)!

(6)

see p. 7.)

GROUND FOUR, Page 7.):-

..With This CLEAR TRUTH, and [ADMONITION] that This (1997) THREE STRIKES LAW' — It's NOT THE LAW, That THE PEOPLE OF California Voted FOR In Approval FOR Violent OFFENDERS (1994).

* Moreover, WE DO NOT BELIEVE, that THE PEOPLE of California ——— In fact Intended To Make mis-Deamon-Crimes Punishments' subject TO — 25-Years TO Life! This Fact Should Not Be — Concealed From The Public At Large.....!

E.g., With The "High-Probability" Sentencing Him TO 60-Years TO Life Upon These Forty — and 38 Year old PRIORS, is Indeed Marking — Him 'A POSTER CHILD' — as A Victim of JUDICIAL ABUSE OF POWER & Excessive 8th Amendments — PUNISHMENTS — Which is Honorably Protected — Under :- (WEAVER VS. GRAHAM, Supra, 450 U.S. at 30, 32, 101 S. Ct. at 966, 67 L. Ed. 2d. 17.) (1981); United States Constitution, Article I, Sections 9, and 10, & 4th, Article III, Section 1, California Constitution — Prohibits The State from Passing EX Post Facto — LAWS. The Due Process Clause of The FOURTEENTH AMENDMENT Was Intended TO Prevent Government From Abusing (THIS) Power, or Implementing it as * an Instrument Of OPPRESSION, (DAVIDSON VS. CANNON, 474 U.S. 344, at 348, 106 S. Ct. 668, at 670, 88 L. Ed. 2d. 677.) (1986); See also, (Daniels Vs. Williams, 474 U.S. 327, at 331-332, 106 S. Ct. 662, at 665, 88 L. Ed. 2d. 662.) (1986). ; (— ("To Secure The Individual From Arbitrary Exercise of Powers, ... (T) See, P.8.)

GROUND FOUR, Page 8.):-

.... of Government, and to prevent Governmental-Powers from being used for Purposed Oppression.) ; In, (Paratt V. Taylor, 451 U.S. 527, at 549, 101 S.Ct. 1908, at 1919, 68 L.Ed. 2d. 420.) (1981). (Misuse of Power.)

Petitioner alleges, this Sentence was 'Un Constitutional-Founded in Lack of A Fair Trial, and Un Reliable Evidence - materially - False' - Which The Prisoner Had NO Opportunity To Correct - Setting The RECORD Straight.

"Mandatory Hearings Required." in,

See, (Ground Two:-

Petitioner alleges His Sentence of Total 'SIXTY Years TO LIFE IS Legally & Morally WRONG & (Disproportionate) to The Underlying - Facts' - EVEN IF He was Actually - Guilty ?? Sentencing Mr. ALVAREZ, upon FORTY, and THIRTY Year OLD PRIORS, Violates ALL The LAWS (Cited) and Violates The Rules & LAWS of Human Decency - & Respect for The LAW. Petitioner Has "Constitutional Rights to 'EXpectations', to Receive 'Honesty and Fair Dealings' - from ALL COURTS and ALL Prison Officials." as so, ANNUNCIATED By the Calif. SUPREME COURT, In, (People V. Ramirez, 25 Cal. 3d. 260, at 267 to 270, 158 Cal Rptr. 316, at 319, 320-321, 599 P.2d. 622.) (1979.) "

GUARDIANS OF INDIVIDUAL LIBERTY!

* Federal Court's Duty & Responsibility is.... being The Guardians of Individual Citizens Constitutional Rights; as being of paramount concern." (Ex parte Virginia, (1879).... 100 U.S. 339, at 348.); (Mitchum V. Foster, 407 U.S. 225, at 242.)

GROUND FOUR, Page 9):-

See also, (Peyton V. Rowe (Va. 1968) 83 S. Ct. 1549, 391 U.S. 54, 20 L. Ed. 2d. 420.) ("The writ of Habeas Corpus is both The Symbol and Guardian of Individual Liberty." (Ibid.); (Boydston V. Wilson, 365 F. 2d. 238.)."

FEDERAL LAWS VIOLATED.

"Where a Trial and a Sentence are VOID By A LAW (or LAWS) of The United States, any CUSTODY Under them is a violation of That LAW, Relief may be obtained under Habeas Corpus, in The Courts of The United States." (In re Filton, 55 F. 271.) (Vt. 1893.); (Harris V. Nelson, 394 U.S. 286, at 292. (1969); (Fay Vs. Noia, 372 U.S. 391, at 424, & 440-441.) (1972). See also, Article III, Section 1, The California Constitution.). !!

A SYSTEM OF UNEQUAL JUSTICE!

FACTS :- The Calif SUPREME COURT LIVES BY Their DisRegarding 'The Rule of LAW' & CONSTITUTION. (It's Politicized LAW). Petitioner's Case is A Victim of (MOB Rule's PREJUDICE - & DisRespect) Against The Poor and DisAdvantaged Citizens!

Petitioner seeks this Honorable Court To Restore, Honor and Secure ALL American Federal and Fundamental Constitutional Rights. He is Seeking ALL That THE LAWS Guarantees to Him & for All Citizens. * Be Advised Petitioner is A Veteran and served His Country in KOREAN WAR)! WE Like to see, sweet Liberty - And JUSTICE FOR ALL Secured! WE NEED TO - See (Again) "GUARDIANS OF INDIVIDUAL LIBERTY" Functioning FOR ALL.

END OF GROUND FOUR:-

(9)

See, GROUND FIVE:-

One-Sided Trial

The Right of This Petitioner Was
Never Obeyed! "Lawyers in Criminal Cases —
 "are necessities — Not Luxuries." Their presence is
 essential because They are securing The Rights of Petitioners,
The Right To Have effective assistance of Counsel."

(McMann V. Richardson, 397 U.S. 759, at 771 & footnote
 4, 90 S.Ct. 1441.) (1970); (United States V. Cronin, 466 U.S. 648,
 650-652, 80 L.Ed. 2d. 657, 662-663-664, 104 S.Ct. 2839.)
 (1984). Lacking Effective Counsel at Trial and

At Appeal!

No Advocacy Herein. The
Appellant Counsel Must be "An Active Advocate,"
Not a mere friend of the Court; in, (Anders V. —
 California, 386 U.S. (743) 18 L.Ed. 493, 87 S.Ct. 1396.) (1967);
 (Evitts V. Lucey, 83 L.Ed. 2d. 821, at 827-828, 829, 469 U.S.
 387, at 395-396, 105 S.Ct. 830.) (1985); (Strickland V.
 Washington, Supra, Failed To Address or Adjudicate The
Merits. (469 U.S. 395-396, 83 L.Ed. 2d. at 829, & n. 6.)
 See The purpose & ultimate objective." (Herring V. New —
 York, 422 U.S. 853, at 862, 45 L.Ed. 2d. 593,
 95 S.Ct. 2550.) (1975) (Id. at 665) (Cronin, — Supra, above)

COPY

(d) GROUND FIVE: PETITIONER'S SENTENCE, SIXTY-YEARS TO LIFE IS UNCONSTITUTIONAL; IT IS DISPROPORTIONATE TO HIS CONDUCT; Substantive Violations Of 1st, 5th, 8th, & 14th AMEND. VIOLATIONS.

Supporting FACTS (state briefly ~~without~~ citing cases or law): Petitioner, Has indeed EXHAUSTED ALL FACTS & GROUNDS HEREON — Appeals & ALL 5-GROUNDS on Habeas Corpus.

MANDATORY HEARINGS

ARE REQUIRED.

Petitioner Has NEVER Had Any Due Process Hearings to correct Materially-False-Evidence & His Illegal Sentence, Or, To correct ARBITRARY Deprivations of His Vested Liberty Interests Because of What The State Is Doing To Him; while under Materially False Factual Conclusions. Petitioner Has Been Falsely convicted under (The Official MOB'S Rule & PREJUDICE) and Deceit Likewise, as in, (Moore Vs. Dempsey, Supra, 261 U.S. 86, at p. 91). Allegations: — The "EVIL-EYE" & "UNEQUAL HAND OF JUSTICE" is Present in These Proceedings, more so, Warranting SUCH, MANDATORY HEARINGS.

"Petitioner's Potential LIFE SENTENCE for two counts of Residential Burglary, is UnConstitutional founded on False Facts & Deceit — it is so DisProportionate To His Conduct that it, "SHOCKS THE CONSCIENCE" And Offends our Fundamental Concepts of Human Dignity." (Id. at 424.). (In re Lynch, 8 Cal. 3d. 410, at 424.) (1972); "The California Supreme Court Held: "That A Punishment...

Did you raise GROUND FIVE in the California Supreme Court?

☒ Yes ☐ No.

Cont. see,
Page 1, Et. AL,

GROUND FIVE, (Page 1.) :-

... may violate Article I, Section 17, of The Constitution ~~IF~~ Although NOT Cruel or Unusual in it's Methods, it is so DISPROPORTIONATE TO THE Conduct/crime for which it's inflicted, that it 'Shocks The Conscience' and Offends our Fundamental Nations of His, of (Defendants)" (Emphasis Supplied) Human Dignity." (Id. at 424.)

Petitioner Alleges ALL of this Sentence is so 'SHOCKING TO THE CONSCIENCE' - of (MOB RULE - of PREJUDICE UnWarranted) from His Past, upon Wrong Facts. Calif. SUPREME COURT, & Chief JUSTICE RONALD M. GEORGE, Failed To Adjudicate The Substantive MERITS, & DisRegarded ALL Due - Process Federal Rights of His Citizenship (Federal's - granting such Authorities Cited.): (Throughout proceedings).

CONSIDER, WE DO NOT KNOW - ?

*** IF The Chief JUSTICE, RONALD M. GEORGE, Even Read The Facts and GROUNDS ?? Or, IF ALL Supreme Court JUSTICES HAD ANY Genuine Opportunity TO EXamine THE RECORD/MERITS???

*** Obviously (The SIX TON Elephant) was in The Room! The State's Appellate Court & SUPREME COURT - Absolutely Failed To Acknowledge such facts of prima facie UnEqual JUSTICE - Nor, to Recognize (The Official's MOB Rule of PREJUDICE & Deceit) as was seen in (Moore V. Dempsey, supra, at p. 91.).

(1)

Cont. see, P. 2.)

GROUND FIVE, Page 2.) :-

Which warranted ipso facto:- "Opening The
 - Door Of Inquiry" - of How, with NO Reliable
 **Material or Physical Evidence (MisDemeanor(s) -
 Become Felonies Via, (Manufactured Evidence)!

The Factual TRUTHS' Are Defendant/Petitioner
 NEVER Had Any Fair-Trial" (One-Sided). With
 NO Aid or Assistance, To present His Defenses
 * with In Effective & In Adequate Prejudicial Legal
 Counsel. With A Trial Judge' Lacking required
 (Discernment For A Fair Trial) Lacking with
 "FULL DISCLOSURE" and Lacking Compassion,
 Concern for Human Dignity Rights of Dis Advant -
 - aged Defendant/Petitioner. Absolutely NO (None)
 Fundamental-Fairness' in Evidence - in TRUTH and
 * REALITY - There Never was reliable-evidence, esp.,
 in 2nd charge of Any 1st Degree (Pen. Code Sect. 459.) -
 - Burglaries! ALL under Manufactured UnRel -
 - iable Evidence, so much so, which "SHOCKS THE -
 Universal Sense & Conscience of JUSTICE." (Citations).
 Cf., Trop V. Dulles, supra, 356 U.S. 86, at page 101, -
 2d Ed. 630, at 641 to 643. (1958)."

CONSIDER REQUIREMENTS RESPECTING
 HUMAN DIGNITY RIGHTS.

//

//

//

Do Consider This Judges Decision in, (La Reau V. McDougall,
 Supra, 473 F. 2d 974, at Page 978 & footnote 7.) :-
 (2) see P. 3.)

GROUND FIVE, (Insert Pages): -

Between Pages: - 2 & 3.)

TAKE JUDICIAL NOTICE:-

We Are Dealing with 1st, 5th, 8th, & 14th, AMEND. Violations.

"RIGHTS TO BE HEARD" WITH

"FULL DISCLOSURE" ISSUES.

Petitioner Does Not Believe That The CLERK
For Calif. SUPREME COURT, Mr. F.K. OHLRICH, CLERK:-

Did "Photo Copied Original Supreme Court Habeas
Corpus Writ" and Served All 7-Supreme Court —

Justices and Their Law Clerks? WE DO NOT
Know (for A Certainty) if Chief Justice RONALD M.
GEORGE, even Had Any Opportunity To Review?
These Substantial Due Process Rights, Fundamental
Constitutional Violations of THE —

FIRST, FIFTH, EIGHTH & FOURTEENTH Amend —
ments ?? Violations. Article III, Section 1, Calif.'s
Constitution. Here CENTINELA STATE PRISON (CSP) —

"C" Facility LAW Library Will ONLY make 3-Copies - TO —
ANY Courts! There Fore, Petitioner & Prisoners are Denied
& Deprived 1st & 14th, Amendment Rights ACCESS TO COURTS — with
Due Process & "EQUAL PROTECTION OF THE LAWS" Under Principles
of "FULL DISCLOSURE" And "RIGHTS TO BE HEARD"!

As Petitioner's Due Process Rights,
To Have His Issues & Constitutional
Rights To Be Heard & Determined By
ALL JUSTICES AS They Claim IN BANK.

See page (B)

Page (A) Insert see p. (B)

Insert Page (B) :- (cont.) :-

See, Clerk's Legal Letter Request = Attached Behind -
 Last Page of STATE H/C FORM in Front of Exhibits!
 it cannot be overlooked (consists of 4-Pages).
 This Issue Requires "Strict Judicial Review".

EQUAL PROTECTION OF THE LAWS - CLAUSE.

* * * This State BUREAUCRACY System is
 Depriving Prisoners of ACCESS TO COURTS
 Rights - Where we can only serve One Copy
 To The Courts. Under guaranteed
 Rights to "FULL DISCLOSURE" To 7-Supreme *
 Court Justices. With A State Dedicated
 To Serving The People (regardless of Class)
 WE Suffer from Discrimination et cetera, etc...!

DATED: Sept. 26TH, 2006

Case No. 06-2112-(WQH).

Anthony Alvarez
 ANTHONY ALVAREZ,
 V-12145, Q-Facility, C-125-L,
 CENTINELA STATE PRISON

#92251)

In Pro Per

INSERT PAGE (B)

Between GROUND FIVE Pages 2 & 3.

Nothing is more fundamental To provision
of A Fair Trial — Than right to impartial Jury. (Miller V.
State of (N.C., 1978.) 583 F.2d. 701.);
(Live Nerve) issue,

GROUND FIVE, Page 3:)-

... At Page 978.): - "Prison Officials, No less than Sentencing Judges, are Bound by the Strictures of the EIGHTH Amendment." *** "In Order to preserve The Human Dignity of inmates and the Standards of Humanity embraced by our Society, WE CANNOT SANCTION such Punishments?"

"See, (Trop V. DULLES, supra, at page 101.)."

Page 978 Cont.) "And the "Conscience" (8TH Amendment.) of The Clause is concerned with is The Collective Conscience of our Society, —

— NOT The Conscience of Judges or Prison Officials as Individuals." (emphasis supplied.) (Id. p. 978?). Check: - For The FULL TEXT of This [Admonition] See, in GROUND ONE in Pages 3 & 4) - No Rights To A Fair Trial etc.).

Allegation :- This (Disproportionate Sentence of 60 Years To Life (CS) "SHOCKS THE CONSCIENCE" of ANY REAL PEOPLE — Objectively.

WE NEED Our Federal Courts To Be Guardians of Individuals Constitutional Rights' — Dedicated To The Rule of LAW' — (Dedicated) To — Serving THE TRUTH and JUSTICE Principles - FACTS.

Not in Covering-Up' The Truth in Profanation Via, "STONEWALLING THE LAWS" — California COURTS STYLE — Dis Regarding Federal Due Process Rights & LAWS — Masquerading Justice!

See, Authorities in GROUND FOUR —

at pages 8 & 9.) (Cont.)

(3)

See Page H.)

GROUND FIVE, Page 4.) :-

Essentially, Petitioner's Legal Claims are That 'THREE STRIKES LAWS' - Increased His Punishments - with Severe and (AGGRAVATIONS) - that "SHOCKS THE CONSCIENCE" and Offends His - Human Dignity Rights; Likewise, (EXACTLY) it is Offending Our Federal and State Constitutions - which prohibits EVIL; But Honors & Secures - Concepts of "The Spirit of THE LAW". Which - Dictates genuine JUSTICE", as in THE TRUTH, in The Mind of The LAW. (MENS LEGIS).

* * * Check:- This (Twice Amended By Legislature) Not *
What The Citizens of California Voted For!! "THREE STRIKES LAW" Inflicts Greater In Humane - PUNISHMENTS, Than The LAW Annexed TO The Crime - When Committed FORTY YEARS PAST!

Alleging:- Such Unjust, UnFair LAW Offends The United States Constitution in it's essence, (Identity) is for - EQUAL JUSTICE UNDER LAW - and - Not for EX Post Facto LAWS.....!

Petitioner Mr. ALVAREZ, Believes That He Has guaranteed (Federal Rights and LAWS) Protections From this Alleged Judicial Abuse & Misuse of Power under Both Federal and State Constitutions. (Citations) cited in GROUND FOUR pp. 8 & 9.) See also, - (City of Dallas, Et. AL. Vs. Mitchell, 245 S.W. 944, - at pp. 945 - 946.) (Texas - 1992); It is The Duty of The COURT(S) TO Be Watchful for The Constitutional Rights of The Citizen, Against (ANY) StealTY.....

GROUND FIVE, Page 5.):-

....En crochments Thereon." (Emphasis Supplied.);
(Moony Vs. Hobban, 294 U.S. 103, at 112-113.); see also.)
Article III, Section 1, California's Constitution.

CITIZENSHIP VESTED 'RIGHTS' ARE TWARTED:-

California's COURTS Failed To Address or Adjudicate The Factual
Violations of Federal Constitutional Due Process guaranteed & Denied.
Therefore, ALL of His Vested Citizenship Rights are TWARTED)...
...To Prevent, Truth & JUSTICE TO TAKE PLACE!! Supported By
ALL LEGAL Authorities for Relief cited hereing, this Viable
Habeas Corpus "RELIEF & REMEDY" Will Be Governed
in Subordination (NOT) To The Proceedings; But "Opens
The Door of INQUIRY." Whether They Have Been 'Farce &
SHAM' Proceedings as Claimed Offending Our —
LAWS & Constitution, Likewise Offending State Constitution.

RESPECTFULLY SUBMITTED,

I swear, certify and declare under penalty
of perjury ALL of the foregoing is ALL True ...
...and Correct. Dated and Signed Under Title
28 U.S.C. Section 1746.); and California's C.C.P.
Sections 2015.5.) Dated & Signed. Sept. Sept. 26th, 2006).

* COPY *

SINCERELY YOURS,

CONCLUSION — AND
PROOFS OF SERVICE'

Attached With
State HABEAS CORPUS,
& EXHIBITS.

Anthony Alvarez
ANTHONY ALVAREZ,
V-12145.) C-Facility, C-1-125-L.)
CENTINELA STATE PRISON.
#92251)

In Pro Per,

CONCLUSION.

Petitioner PRAYS This Honorable Court will i.e., Address, Correct & CURE These Substantial Constitutional Merits Presented for Relief & Remedy, From Alleged EIGHTH - AMENDMENTS VIOLATIONS - Prohibited By Both The Federal... & State Constitutions. Trusting:-

THAT IT "SHOCKS YOUR CONSCIENCE."

From it's EXCESSIVE PUNISHMENTS from FORTY Year Old PRIORS' EXACERBATING & Profaning The Purpose And Function of our legitimate LAWS and - Constitution.

Petitioner Believes He Has Sufficiently — Shown this Honorable U.S. District Court, This Sentence is WRONG & Illegal Taking Advantage — Over A Poor & Dis Advantaged Man. Such Attitudes Should NOT Be What California's SYSTEMS & OFFICIALS... ..Are ALL ABOUT. Discrimination/PREJUDICE, FACTS.

This Case Needs To Be Reversed Pursuant TO ALL OF The Proper Relief & Remedies Provided for in ALL Legal Authorities cited Herein, and for.... the Common Good.

DATED: Sept. 26th, 2006). RESPECTFULLY SUBMITTED,

* COPY *

Anthony Alvarez
ANTHONY ALVAREZ,
V-12145, C-Facility, C-1-125-L,
CENTINELA STATE PRISON
Post Office Box - 921,
Imperial, California #92251)
In Pro Per,

(40)

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: Not Applicable

(b) Case Number: " "

(c) Date action filed: " "

(d) Nature of proceeding: " "

(e) Grounds raised: N/A

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No N/A

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Unknown

(b) At arraignment and plea: " "

(c) At trial: RICHARD D. BERKON, Jr.; 233 A Street, Suite 500,
San Diego, California #92101

(d) At sentencing: " "

(e) On appeal: Attorney NANCY OLSEN, Encinitas, Calif. #92023/1153

(f) In any post-conviction proceeding: None #92023

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

(11)

Case No. 3-06-2112 (WQH)

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

NOT Applicable

(b) Give date and length of the future sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

N/A

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

September 26th, 2006

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

No. 3:06-2112 (WQH)

NONE

N/A

SIGNATURE OF ATTORNEY (IF ANY)

Case No. 3:06-2112 (WQH)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Sept. 26th, 2006

(DATE)

Anthony Alvarez

SIGNATURE OF PETITIONER

* COPY *

ANTHONY ALVAREZ,
V-12145.) C-Facility, C-1-125-L,
CENTINELA STATE PRISON
POST OFFICE BOX-926,
Imperial, Calif. #92251)

(12)

In Pro Se

Short Title:

ANTHONY ALVAREZ V. Victor M. ALMAGER, Warden

Court Case No:

No. 06-2112-(WQH).

No. 3:06-2112-(WQH)

Proof of Service By Mail

I am over the age of 18 and a party/not a party (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON - (I.D. # V-12145)
 2302 BROWN ROAD
 P.O. BOX 921
 IMPERIAL, CA 92251

I served the attached:

Federal Habeas Corpus Petition &By enclosing true copies in a sealed envelope addressed to each person EXHIBITS

whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: Sept. 26th, 2006NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILEDORIGINAL
ACOPYCLERK,United States District Court,(Southern District):-United States Court House Rm. 4290,San Diego, California # 92101/

I certify under penalty of perjury that the foregoing is true and correct.

8900

DATE:

Sept. 26th, 2006ANTHONY ALVAREZ,

(TYPE OR PRINT NAME)

V-12145, C-Facility, C-1-125-L)CENTINELA State Prison#92251(44)

Anthony Alvarez
 (SIGNATURE OF DECLARANT)

In Pro Per,

Short Title:

ANTHONY ALVAREZ V. VICTOR M. ALMAGER, Warden

Court Case No:

No. 06-2112-(WQH).

No. 3:06-2112 (WQH).

* COPY *

Proof of Service By MailI am over the age of 18 and a party/~~not a party~~ (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON - (I.D. # V-12145)
2302 BROWN ROAD
P.O. BOX 921
IMPERIAL, CA 92251

I served the attached:

Federal Habeas Corpus Petition AndBy enclosing true copies in a sealed envelope addressed to each person EXHIBITS,

whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: Sept. 26th, 2006

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

OFFICE OF ATTORNEY GENERAL,
116 W. "R" Street, Suite 1100,
Post Office Box - 85266,
San Diego, California
92186/5266Warden Not Served
NOT ALLOWED...
VICTOR M. ALMAGER, Warden
OFFICE OF WARDEN,
CENTINELA STATE PRISON
Post Office Box - 921,
Imperial, California
92251

I certify under penalty of perjury that the foregoing is true and correct.

DATE: Sept. 26th, 2006.ANTHONY ALVAREZ,

(TYPE OR PRINT NAME)

"C" Facility, C-1-125-L
CENTINELA STATE PRISON
#92251

(45)

Anthony Alvarez
(SIGNATURE OF DECLARANT)In Pro Per,...

CLERK, UNITED STATES DISTRICT,
SOUTHERN DISTRICT)
(Room 4290)

San Diego, California
92101

* COPY *

September 26TH, 2006)

* * * INSERT Page, In Lieu of p. 46.)

Dear COURT CLERK

:-

PLEASE TAKE JUDICIAL NOTICE:-

Of These Facts: Page 46: Will Be His ABSTRACT
OF JUDGEMENT (RECORDS OFFICE). When the Prison
Staff finally sends it to us. It Has Been approx.,
4-plus weeks, and with Second Requests?

WE will Forward it to this Court and to the
Atty: General's Office — Whenever, Prison Staff in
RECORDS OFFICE sends it to us. ! ?

Original P. 46, and two copies will be sent.

THANKING YOU, in Advance for such due consideration.

SINCERELY,

Nov. 11TH, 2006 —

7-Requests properly
Made & Disregarded...

No Compliance?

A Anthony Alvarez,

ANTHONY ALVAREZ,

V-12145) C-Facility, C-1-125-L,
CENTINELA STATE PRISON.

Imperial, Calif #92251

In Pro Per,

(INSERT PAGE)

S136418

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ANTHONY ALVAREZ on Habeas Corpus

Petition for writ of habeas corpus is DENIED.

SUPREME COURT
FILED

JUN 28 2006

Frederick K. Ulrich Clerk

DEPUTY

ORIGINAL

COPY of

Case No. 06-2112 (WOH.)

GEORGE

Chief Justice

RONALD M. GEORGE, ESQ.,

(47)

Court of Appeal, Fourth Appellate District, Division One - No. D043484
S129546

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

ANTHONY ALVAREZ, Defendant and Appellant.

Petition for review DENIED.

SUPREME COURT
FILED

JAN 12 2005

Frederick K. Ohlrich Clerk

DEPUTY

* COPY *

GEORGE

Chief Justice

RONALD M. GEORGE, ESQ.,

S129546
S

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,
Plaintiff and Respondent,

v.

ANTHONY ALVAREZ,
Defendant and Appellant.

Court of Appeal No. D043484

Superior Court No. SCD174061
The County of San Diego

**SUPREME COURT
FILED**

NOV 30 2004

Frederick K. Ohlrich Clerk

Deputy

PETITION FOR REVIEW

* COPY *

Pro per appellant:
Anthony Alvarez, V-12145
P.O. Box 921
Imperial, CA 92251

(48)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ANTHONY ALVAREZ,

Defendant and Appellant.

) Court of Appeal
) No. DO43484

) Superior Court No.
) SCD174061
)
)
)
)
)
)

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE LAURA P. HAMMES, JUDGE

APPELLANT'S OPENING BRIEF

STATEMENT OF APPEALABILITY

This appeal is from a final judgment following a jury trial and is authorized by

Penal Code section 1237.¹


* COPY *

Exhibits.

¹ All further statutory references are to the Penal Code unless otherwise specified.

(49 Total Pages) (Now Total 50 Pages)

No. 3:06-2112 (WQH)
Case No 306-2112-(WQH.)


July 8th, 2007.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY ALVAREZ,)	Case No. 06-CV-2112-WQH (JMA)
)	
Petitioner,)	REPORT AND RECOMMENDATION OF
)	UNITED STATES MAGISTRATE JUDGE
v.)	ON PETITION FOR WRIT OF HABEAS
)	CORPUS
VICTOR M. ALMAGER, Warden,)	
)	
Respondent.)	

I. Introduction

Anthony Alvarez ("Petitioner"), a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus (the "Petition") pursuant to 28 U.S.C. § 2254 challenging his San Diego Superior Court conviction in case number SCD 174061 for two counts of first degree residential burglary. (Lodgment No. 1, Clerk's Transcript ("CT"), at 1-6, 76-77.) Petitioner contends that trial counsel was constitutionally ineffective, the evidence was insufficient to support the conviction, the trial court should have stricken certain prior convictions, the California "three strikes" law should not have been applied in his case, and his sentence of 60 years to life constitutes cruel and unusual

1 punishment under the Eighth Amendment of the Constitution. (See
2 Petition, Grounds One through Four.)

3 The Court has considered the Petition, Respondent's Answer,
4 Petitioner's Traverse (styled "Addendum to Petition for Writ of
5 Habeas Corpus"), and all the supporting documents submitted by
6 the parties. Based upon the documents and evidence presented in
7 this case, and for the reasons set forth below, the Court recom-
8 mends that the Petition be **DENIED**.

9 **II. Factual Background**

10 This Court gives deference to state court findings of fact?
11 and presumes them to be correct. Petitioner may rebut the
12 presumption of correctness, but only by clear and convincing
13 evidence. 28 U.S.C. § 2254(e)(1); see also Parke v. Raley, 506
14 U.S. 20, 35-36 (1992) (holding findings of historical fact,
15 including inferences properly drawn from such facts, are entitled?
16 to statutory presumption of correctness)? The facts as found by
17 the state appellate court are as follows:

18 [¶] On March 10, 2003, Alvarez broke into an apartment
19 in a Hillcrest complex. He took property worth between
20 \$200 and \$300. A month later he extended his arm into
21 an apartment in the same complex. When he saw the
22 occupant in the apartment, Alvarez fled. At the time
23 of sentencing, Alvarez was 71 years old. Two of his
24 strike priors, both robberies ([CA Penal Code] § 211),
25 were 38 years old. The third strike prior, also a
26 robbery, was 18 years old. Since the mid 1950's he has
27 been in and out of jail and prison in what the trial
28 court identified as "an unrelenting life of crime."

(Lodgment No. 8 at 2.)

*None of That
Proves He Broke into an Apartment No
Such Material Evidence...*

25 **III. Procedural Background**

26 The San Diego County District Attorney's Office filed an
27 Information charging Anthony Alvarez with two counts of residen-
28 tial burglary (counts 1 & 2) in violation of California Penal

1 Code ("Penal Code") section 459. (CT at 1-2.) The Information
2 alleged that Petitioner had suffered numerous probation denial
3 priors (Penal Code § 1203(e)(4)), two prison priors (Penal Code
4 §§ 667.5(b) & 668), three serious felony priors (Penal Code §§
5 667(a)(1), 668 & 1192.7(c)), and four "strike" priors within the
6 meaning of Penal Code sections 667(b) through (i), 1170.12 and
7 668. (CT at 3-4.) A jury found Petitioner guilty of both counts
8 of residential burglary, and the court found that Petitioner had
9 suffered three prior strike convictions and two serious prior
10 felony convictions. (CT at 76-77, 200.) Petitioner was sen-
11 tenced to a 50-years-to-life plus 10-years term. (CT at 199-200,
12 202.)

13 Petitioner filed a direct appeal challenging his conviction
14 and sentence in the California Court of Appeal, Fourth Appellate
15 District, Division One. (Lodgment Nos. 5-7.) In an unpublished
16 opinion, the California Court of Appeal affirmed Petitioner's
17 conviction and sentence. (Lodgment No. 8.) Petitioner then
18 filed a Petition for Review in the California Supreme Court,
19 which was denied without comment. (Lodgment Nos. 9-10.) Fi-
20 nally, Petitioner filed a Petition for Writ of Habeas Corpus in
21 the California Supreme Court, which was also denied without
22 comment. (Lodgment No. 11, Petition at 47.)

23 Petitioner filed a petition for habeas corpus relief pursu-
24 ant to 28 U.S.C. § 2254 in this Court on September 28, 2006.
25 [Doc. No. 1.] Respondent filed an Answer on December 13, 2006,
26 and Petitioner filed a Traverse (styled "Addendum to Petition for
27 Writ of Habeas Corpus") on January 18, 2007. [Doc. Nos. 6 and
28 8.]

1 **IV. Discussion**

2 **A. Standard of review**

3 Title 28, United States Code, § 2254(a), sets forth the
4 following scope of review for federal habeas corpus claims:

5 The Supreme Court, a Justice thereof, a circuit
6 judge, or a district court shall entertain an applica-
7 tion for a writ of habeas corpus in behalf of a person
8 in custody pursuant to the judgment of a State court
only on the ground that he is in custody in violation
of the Constitution or laws or treaties of the United
States.

9 28 U.S.C. § 2254(a) (emphasis added).

10 The current Petition is governed by the Anti-Terrorism and
11 Effective Death Penalty Act of 1996 ("AEDPA"). See Lindh v.
12 Murphy, 521 U.S. 320 (1997). As amended, 28 U.S.C. § 2254(d)
13 reads:

14 (d) An application for a writ of habeas corpus on
15 behalf of a person in custody pursuant to the judgment
16 of a State court shall not be granted with respect to
any claim that was adjudicated on the merits in State NONE
court proceedings unless the adjudication of the claim

17 (1) resulted in a decision that was contrary
18 to, or involved an unreasonable application
19 of, clearly established Federal law, as de-
20 termined by the Supreme Court of the United
States; or

21 (2) resulted in a decision that was based on
22 an unreasonable determination of the facts in
light of the evidence presented in the State
court proceeding.

23 28 U.S.C. § 2254(d) (1)-(2) (emphasis added).

24 To obtain federal habeas relief, Petitioner must satisfy
25 either § 2254(d) (1) or § 2254(d) (2). See Williams v. Taylor, 529
26 U.S. 362, 403 (2000). The Supreme Court interprets § 2254(d) (1)
27 & (2) as follows:

28 Under the "contrary to" clause, a federal habeas court
may grant the writ if the state court arrives at a

1 conclusion opposite to that reached by this Court on a
2 question of law or if the state court decides a case
3 differently than this Court has on a set of materially
4 indistinguishable facts. Under the "unreasonable
5 application" clause, a federal habeas court may grant
6 the writ if the state court identifies the correct
7 governing legal principle from this Court's decisions
8 but unreasonably applies that principle to the facts of
9 the prisoner's case.

6 Williams, 529 U.S. at 412-413; see also Lockyer v. Andrade, 538
7 U.S. 63, 73-74 (2003).

8 Where there is no reasoned decision from the state's highest
9 court, this Court "looks through" to the underlying appellate
10 court decision. Ylst v. Nunnemaker, 501 U.S. 797, 801-806
11 (1991). If the dispositive state court order does not "furnish a
12 basis for its reasoning," federal habeas courts must conduct an
13 independent review of the record to determine whether the state
14 court's decision is contrary to, or an unreasonable application
15 of, clearly established Supreme Court law. See Delgado v. Lewis,
16 223 F.3d 976, 982 (9th Cir. 2000) (overruled on other grounds by
17 Lockyer v. Andrade, supra, 538 U.S. at 75-76); accord Himes v.
18 Thompson, 336 F.3d 848, 853 (9th Cir. 2003). However, a state
19 court need not cite Supreme Court precedent when resolving claims
20 presented on direct or collateral review. Early v. Packer, 537
21 U.S. 3, 8 (2002). "[S]o long as neither the reasoning nor the
22 result of the state-court decision contradicts [Supreme Court
23 precedent,]" id., the state court decision will not be "contrary
24 to" clearly established federal law. Id. ? Needs Evidentiary
Hearings....

25 **B. Ineffective Assistance of Counsel**

26 Petitioner contends his trial counsel, Richard Berkon, was
27 constitutionally ineffective because he failed to call an expert
28 on eyewitness identification and because he failed to present a

1 defense. (Petition, Ground One.) Petitioner raised these claims
2 for the first time in the California Supreme Court on collateral
3 review. (Lodgment No. 11 at Ground 1.) That court denied the
4 petition without comment. (Petition at 47.) Because the Cali-
5 fornia Supreme Court did not "furnish a basis for its reasoning,"
6 this Court must conduct an independent review of the record to
7 determine whether the state court's decision is contrary to, or
8 an unreasonable application of, clearly established Supreme Court
9 law. See Delgado v. Lewis, supra, 223 F.3d at 982; accord Himes
10 v. Thompson, supra, 336 F.3d at 853.

11 Under clearly established U.S. Supreme Court law, to estab-
12 lish ineffective assistance of counsel, Petitioner must show: (1)
13 "counsel's representation fell below an objective standard of
14 reasonableness"; and (2) there is a reasonable probability that,
15 but for counsel's errors, the result of the proceeding would have
16 been different. Strickland v. Washington, 466 U.S. 668, 688,
17 690, 692, 694 (1984). The Court must review counsel's perfor-
18 mance deferentially. Additionally, a wide measure of deference
19 must be given to counsel's tactical decisions. Indeed, Strick-
20 land notes that "counsel's tactical decisions are virtually
21 unchallengeable." Strickland at 690; see also, Furman v. Wood,
22 190 F.3d 1002, 1007 (9th Cir. 1999). A petitioner "must overcome
23 the presumption that, under the circumstances, the challenged
24 action 'might be considered sound trial strategy.'" Strickland
25 at 689 (citations omitted).

26 **(1) Expert on eyewitness identification**

27 Petitioner was convicted in part because of the testimony of
28 Mary Davis, who saw him at the apartment complex on the days of

1 the burglaries. (RT 35-85.) On March 10, 2003, Ms. Davis saw
2 Petitioner enter and then exit her neighbor's apartment carrying
3 items he did not have when he entered. (RT 39-41.) A month
4 later, Ms. Davis saw Petitioner looking in the window of another
5 apartment, at which time she reported his presence to an employee
6 of the complex. (RT 45-46.) Petitioner contends that trial
7 counsel was ineffective because he failed to call an expert in
8 eyewitness identification, presumably to undermine Ms. Davis'
9 "unreliable identification."

10 (Respondent correctly notes that Petitioner has failed to
11 specify how the expert would testify and what difference that
12 testimony would have made in the outcome. As such, Petitioner's
13 showing is plainly insufficient to support habeas relief.
14 Strickland, supra, 466 U.S. at 688, 690, 692, 694. Presumably,
15 Petitioner would argue that if the testimony of Ms. Davis were
16 undermined by an expert, the circumstantial evidence is all that
17 would have remained, and he would have been acquitted. Even if
18 Petitioner had made this argument, it ignores the fact that
19 circumstantial evidence alone is sufficient to support a convic-
20 tion, and the jury was so instructed. (CT 61, CALJIC 2.00.)

21 Moreover, the jury was thoroughly instructed regarding how
22 to consider and weigh eyewitness testimony. Specifically, the
23 jury received the following instructions: "Burden of Proving
24 Identity Based Solely on Eyewitnesses" (CALJIC 2.91), "Factors to
25 Consider in Proving Identity by Eyewitness Testimony" (CALJIC
26 2.92), "Believability of Witness" (CALJIC 2.20), and "Sufficiency
27 of Testimony of One Witness" (CALJIC 2.27). (CT 54, 55, 42 &
28 46.)

1 After an independent review of the record, it is clear that
2 Petitioner has made no showing that trial counsel was objectively
3 unreasonable for not introducing expert testimony on eyewitness
4 identification. Thus, the Court of Appeal's denial of this claim
5 was not contrary to, or an unreasonable application of, Strick-
6 land, and the claim should be denied.

7 **(2) Failure to present a defense**

8 Petitioner also contends that counsel was constitutionally
9 ineffective because he "failed to investigate the facts or
10 present them. Absent those omissions and trial errors by his
11 legal counsel, the results of the trial would have been differ-
12 ent." (Petition at "Ground One Page 4.") It appears that
13 Petitioner alleges that his counsel should have presented facts
14 to support the following:

15 Defendant/Petitioner had every right to be at this
16 apartment complex on the date of his arrest. The true
17 facts were (concealed from jurors): His ex-girlfriend
18 (Easter Yarborduch) [] had lived with him at this
19 apartment complex. She had introduced Defendant to a
20 male friend of hers - who lived in a separate section
21 at this same apartment complex. The Defendant/
22 Petitioner was trying to make a connection with that
23 man to share an apartment.

24 [¶] At this point in time, Defendant was gainfully
25 employed as a telemarketer, and had worked at that job
26 for 14-months.

27 (Petition at "Ground One Page 2.") While Petitioner makes
28 conclusory statements of fact that he contends would have sup-

ported his defense, he proffers no actual evidence or testimony

29 to support them. *WHY we Need Evidentiary Hearings TO Facts Alleged...*
30 Thus, they cannot support a finding that

31 counsel was objectively unreasonable in failing to present *?*

32 Petitioner's version of events. James v. Borg, 24 F.3d 20, 26

33 (9th Cir.), cert. denied, 513 U.S. 935 (1994) (conclusory allega-

1 tions that are not supported by specific facts do not merit
2 habeas relief); O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
3 1990) (the petitioner must state facts which point to a real
4 possibility of constitutional error). Done. Amicus-Curiae.)^L

5 Moreover, a review of the record reveals that while defense
6 counsel Richard Berkon did not present affirmative evidence in
7 support of Petitioner (see RT 203), he extensively cross-examined?
8 the prosecution's witnesses. For example, Mr. Berkon cross-
9 examined eyewitness Mary Davis in an attempt to impeach her
10 testimony and identification of Petitioner. (RT 54-72, 84-85.)
11 Specifically, counsel used her previous testimony and statements
12 made to the police to attempt to undermine the reliability of her
13 statements at trial. (E.g. RT 68.)

14 Mr. Berkon cross-examined ~~Sheila Faulkner~~ No Police Report..., the victim from
15 the first burglary and, in doing so, raised the possibility that
16 Petitioner was a homeless person who resided in the area (thereby
17 raising the possibility that Petitioner was seen at the complex
18 for reasons other than burglary). (RT 92-95.) Mr. Berkon cross-
19 examined Bradley Willson, the victim from the second burglary,
20 and established that he only saw a silhouette of the person at
21 his bedroom window. (RT 103.) He also cross-examined Steven
22 Fasolino, the maintenance person for the apartment complex,
23 attempting to impeach his testimony with inconsistent preliminary
24 hearing testimony, and made numerous objections during his direct
25 testimony. (RT 104-119.) In closing argument, Mr. Berkon argued
26 the inconsistencies in the identification witnesses' testimony
27 and highlighted the lack of fingerprint evidence at the crime ?
28 scenes. (RT 228-240.)

1 A wide measure of deference must be given to counsel's
2 tactical decisions. "[C]ounsel's tactical decisions are virtu-
3 ally unchallengeable." Strickland, supra, 466 U.S. at 690; see
4 also, Furman v. Wood, 190 F.3d 1002, 1007 (9th Cir. 1999). A
5 petitioner "must overcome the presumption that, under the circum-
6 stances, the challenged action 'might be considered sound trial
7 strategy.'" Strickland, supra, 466 U.S. at 689 (citations
8 omitted).

9 After an independent review of the record, it is clear that
10 Petitioner has made no showing that trial counsel was objectively
11 unreasonable in failing to present Petitioner's case.[?] The record
12 supports a finding that Mr. Berkon was fully engaged in defending
13 Petitioner and that he employed sound trial strategy in doing so.
14 Thus, the Court of Appeal's denial of this claim was not contrary
15 to, or an unreasonable application of, Strickland, and the claim
16 should be denied.

17 **C. Insufficiency of the Evidence**

18 Petitioner contends that the evidence was constitutionally
19 insufficient to support his convictions for residential burglary.
20 He contends he was guilty of a misdemeanor at most because he did
21 not "enter" the apartment (presumably referring to the second
22 burglary), and he was convicted based on his past record.
23 (Petition at Ground Two.) Petitioner raised this claim for the
24 first time in the California Supreme Court on collateral review.
25 (Lodgment No. 11 at Ground 2.) That court denied the petition
26 without comment^{Nor Adjudication} (Petition at 47.) Because the California
27 Supreme Court did not "furnish a basis for its reasoning," this
28 Court must conduct an independent review of the record to deter-

Magistrate gives The State (Intent)
Not Petitioner's Intentions — (Allegation Being
"Politically-Correct" — Prima Facie PREJUDICIAL
Avoiding The True Facts + Evidence. Opposite
The State's Arbitrary Abuse of The LAW & THE TRUTH!

1 mine whether the state court's decision is contrary to, or an
2 unreasonable application of, clearly established Supreme Court
3 law. See Delgado v. Lewis, supra, 223 F.3d at 982; accord Himes
4 v. Thompson, supra, 336 F.3d at 853.

5 The Fourteenth Amendment's Due Process Clause is violated
6 "if it is found that upon the evidence adduced at the trial no
7 rational trier of fact could have found proof of guilt beyond a
8 reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 324
9 (1979). In deciding whether a due process violation has oc-
10 curred, this Court must look to "the substantive elements of the
11 criminal offense as defined by state law." Jackson, 443 U.S. at
12 324, n. 16. Under California law, "[e]very person who enters any
13 house ... [or] apartment ... with intent to commit grand or petit
14 larceny or any felony is guilty of burglary." CA Penal Code
15 § 459.

16 Significantly, in order to constitute burglary under Cali-
17 fornia law, entry need not be made by any part of a defendant's
18 body, but entry may be made by an instrument, where the instru-
19 ment is inserted for purpose of committing the felony. People v.
20 Walters, 57 Cal.Rptr. 484 (App. 2 Dist. 1967); see also, People
21 v. Failla, 51 Cal.Rptr. 103 (1966) (sufficient "entry" is made to
22 warrant a conviction of burglary when any part of an intruder's
23 body is inside the premises); People v. Massey, 16 Cal.Rptr. 402
24 (App. 1 Dist. 1961) (the placing of a hand in an open window
25 constitutes "entry" for purpose of burglary); People v. Valencia,
26 120 Cal.Rptr.2d 131 (2002) (penetration into the area behind a
27 window screen amounts to an entry of a building within the
28 meaning of the burglary statute when the window itself is closed

Lines 647, Abuse of Discretion — In a
Reasonable Fair Trial — Before Reasonable
Rational People (Objecting) No Facts Here
Allows Any First Degree Burglary Conviction —
It's, Twisting & Distorting The Facts — Another
Profanation of The LAWS!

1 and is not penetrated). As an initial matter, and with regard to
2 the second burglary (at Mr. Willson's apartment), Petitioner
3 concedes in his Petition "his hand reached into [the] open window
4 to push back the blinds (of [the] bedroom), and he called out
5 'Are you awake?' No answer so - he left!" (Petition at "Ground
6 Two page 2.") Under California law, this "amount" of entry is
7 enough to support a first degree burglary conviction. ?

8 An independent review of the record of Petitioner's trial ?
9 reveals that the state court's denial of Petitioner's claim was
10 not contrary to, ~~or~~ an unreasonable application of, Jackson in
11 light of California burglary law. At trial, the prosecution
12 presented the following evidence that Petitioner committed the
13 two burglaries:

14 On March 10, 2003, Mary Davis saw Petitioner enter Sheila
15 Faulkner's apartment after first peering in through the front
16 door. Petitioner came out of the apartment carrying what ap- ?
17 peared to be a balled-up blanket under his arm. About ten
18 minutes later, Ms. Davis saw Petitioner leave the apartment
19 complex, still carrying the blanket. (RT 35-43.) Several items
20 were missing from Ms. Faulkner's home, including a digital
21 camcorder with an LCD monitor, a digital camera, a handset to a
22 cordless phone, food, and a blanket. (RT 90.)

23 Several weeks later, Ms. Davis observed Petitioner looking
24 in the window of Bradley Willson's apartment, and she went to the
25 office to report what she had seen to the apartment manager. (RT
26 44-45.) After being alerted by Ms. Davis, Steven Fasolino, the
27 complex's maintenance person, left the office, found Petitioner
28 near Mr. Willson's apartment, and took his picture. (Petitioner

1 had attempted to change his appearance from earlier that morning
2 by changing his clothes, and slicking down his hair.) (RT 105-
3 113.) At this same time, Bradley Willson was sleeping in his
4 apartment. He heard a knock on the door, which he did not
5 answer. A short time later he heard a rustle at his bedroom
6 window. Mr. Willson observed the window being pried open, and a
7 hand reached inside the apartment and pushed back the blinds.
8 (RT 96-98.)

9 The evidence was plainly sufficient to support Petitioner's
10 convictions. The evidence showed that, on two occasions, Peti-
11 tioner entered an apartment with the intention of committing
12 larceny. Under California law, this is all that is required to
13 establish residential burglary. Clearly, a rational trier of
14 fact could have found beyond a reasonable doubt that Petitioner
15 committed the crimes. See Jackson v. Virginia, supra, 443 U.S.
16 at 324. *Not with A Good Legal Counsel, etc. etc*

17 At bottom, Petitioner appears to rail against the fact that
18 California law defines "putting any part of your body into the
19 apartment" as first degree burglary. (Petition at "Ground Two,
20 Page 2.") That argument raises no issue justifying federal
21 habeas relief because this Court must defer to and is bound by *Half*
22 California's interpretation of its own laws. Wainwright v. *Truth*
23 Goode, 464 U.S. 78, 894 (1983). In light of California law, and
24 given the record at trial, *No* rational trier of fact could have
25 found proof that Petitioner committed two counts of first degree
26 burglary beyond a reasonable doubt. Thus, the California Supreme
27 Court reasonably applied the Jackson standard in denying Peti-
28 tioner's claim. Accordingly, Petitioner was not denied due

1 process, and the claim should be denied.

2 **D. Motion to Dismiss Strike Priors**

3 The trial court found that Petitioner had three strike
4 priors, two prior serious felony convictions, and had served one
5 prior prison term. The court denied a motion to dismiss the
6 strike priors and sentenced Petitioner to 60 years to life:
7 consecutive terms of 25 years to life on each residential bur-
8 glary with two strike priors, enhanced five years for each prior
9 serious felony conviction. (CT 199-200, 202.) Petitioner
10 contends that the strike priors should have been stricken.
11 (Petition at Ground Three.)

12 On this issue, the Supreme Court of California denied
13 Petitioner's Petition for Review without opinion. (Lodgment No.
14 10.) Thus, this Court must "look through" to the California
15 Court of Appeal's decision underlying that denial as the basis
16 for its analysis. See Ylst v. Nunnemaker, 501 U.S. 797, 801-06
17 (1991). In denying Petitioner's appeal, the California Court of
18 Appeal stated:

19 [¶] Whether to strike a strike prior is in the trial
20 court's discretion. (*People v. Superior Court (Romero)*
21 (1996) 13 Cal.4th 497, 529-530.) In ruling whether to
22 dismiss a strike prior the court must consider whether,
23 in light of the nature and circumstances of his present
24 criminal activity and prior serious and/or violent
25 felony convictions, the defendant may be deemed outside
26 the spirit of the three strikes law and should be
27 treated as though he had not committed one or more
28 strike priors. (*People v. Williams* (1998) 17 Cal.4th,
162-163.)

25 [¶] Alvarez argues the trial court abused its discre-
26 tion in failing to dismiss his strike priors because
27 his present crimes were nonviolent and his strike
28 priors are remote in time. However, while Alvarez's
current burglaries may not have resulted in violence,
whenever a stranger breaks into another's home the
potential for violence is great, not to mention the
psychological harm to the victim whose place of privacy

14 *The State Never Proved He
Broke into ANY House-Period.
Lack of Truth & Reality...*

1 and security has been invaded. Moreover, in determin-
2 ing whether the trial court abused its discretion in
3 refusing to dismiss the strike prior, Alvarez's crimi-
4 nal history is paramount. Over the past 46 years,
5 Alvarez has repeatedly been convicted of criminal acts,
6 including being drunk in public (two), theft, burglary
7 (four), escape from prison camp, robbery (three), grand
8 theft (three; one while armed with a firearm or deadly
9 weapon), taking or knowingly driving a stolen vehicle,
10 drunk driving, battery, receiving stolen property,
11 escape from prison, battery on a peace officer, being a
12 felon in possession of a firearm and the present resi-
13 dential burglaries. He does not fall outside the
14 scheme of the three strikes law. The trial court did
15 not abuse its discretion in refusing to dismiss the
16 strike priors.

17 (Lodgment No. 8 at 2-3.)

18 Generally, matters relating to a state court's interpreta-
19 tion of state law do not implicate federal constitutional issues.
20 In fact, this Court defers to and is bound by a state court's
21 interpretation of its own laws. Wainwright v. Goode, 464 U.S.
22 78, 84 (1983); Estelle v. McGuire, supra, 502 U.S. at 67-68.
23 Petitioner has provided no authority to indicate that this case
24 does not fall within that general rule. Moreover, "[a] federal
25 court may not issue the writ [of habeas corpus] on the basis of a
26 perceived error of state law." Pulley v. Harris, 465 U.S. 37, 41
27 (1984).

28 Petitioner's claim deals solely with the interpretation and
29 application of California law, a matter which does not implicate
30 federal constitutional concerns. Moreover, even if Petitioner
31 had raised a claim for which federal habeas relief was available,
32 Petitioner's claim is meritless. The California Court of Ap-
33 peal's reasoning on the issue indicates plainly that that court
34 did not abuse its discretion by declining to strike any of
35 Petitioner's prior convictions. Nothing in Petitioner's long and

1 violent criminal history supports a finding that he should be
2 treated as though he had not committed one or more strike priors.
3 Accordingly, the claim should be denied.

4 **E. Cruel and Unusual Punishment**

5 Petitioner contends that his sentence of 50 years to life
6 plus 10 years violates the Eighth Amendment's prohibition against
7 cruel and unusual punishments. (Petition at Ground Four.) On
8 this issue, the Supreme Court of California denied Petitioner's
9 Petition for Review without opinion. (Lodgment No. 10.) Thus,
10 this Court must "look through" to the California Court of Ap-
11 peal's decision underlying that denial as the basis for its
12 analysis. See Ylst v. Nunnemaker, 501 U.S. 797, 801-06 (1991).
13 In denying Petitioner's appeal, the California Court of Appeal
14 stated:

15 [¶] Alvarez points out his current crimes were nonvio-
16 lent, he was not armed, and his criminal history is
17 primarily nonviolent. He argues that the 60-year
18 sentence is disproportionate to the crimes and there-
19 fore cruel and unusual punishment. Alvarez does not
20 contend the three strikes law is invalid on its face or
21 that an indeterminate sentence of any length consti-
22 tutes cruel and unusual punishment. Instead, he as-
23 serts given the unique facts of this case, the consti-
24 tutional prohibition against cruel and unusual punish-
25 ment is violated by the 60-year sentence because it is
26 disproportionate to his crimes. *To His Conduct in The Matter*

27 [¶] Cruel and unusual punishment is prohibited by the
28 Eighth Amendment of the United States Constitution and
by article 1, section 17 of the California Constitu-
tion. Punishment is cruel and unusual if it is so
disproportionate to the crime for which it is imposed
that it shocks the conscience and offends fundamental
notions of human dignity. (See *Ewing v. California*
2003) 538 U.S. 11, 22 (*Ewing*); *In re Lynch* (1972) 8
Cal.3d 410, 424.). Citing *People v. Mantanez* (2002) 98
Cal.App.4th 354, 359, Alvarez acknowledges "[i]t is not
cruel and unusual punishment to enhance the penalty for
a crime because the defendant is a recidivist [cita-
tions] as long as the ultimate punishment, all facts
considered, is not disproportionate to the crime.
[Citations.]" He argues that given the punishment

1 specified for more serious crimes, a 60-year-to-life
2 sentence for third strike convictions of nonviolent
3 burglaries is disproportionate to the crimes committed
4 and constitutes cruel and unusual punishment.

5 [¶] A similar argument was raised unsuccessfully in
6 *Ewing*. Ewing was convicted of grand theft for stealing
7 three golf clubs worth more than \$400. The felony
8 conviction, classified as a third strike offense by the
9 California Legislature, was Ewing's third such conviction.
10 The trial court sentenced Ewing under the three
11 strikes law to 25 years to life in prison. Ewing
12 appealed contending, in part, that his sentence constituted
13 cruel and unusual punishment under the Eighth
14 Amendment to the United States Constitution. In rejecting
15 the challenge, the United States Supreme Court
16 recognized that it traditionally deferred to the state
17 legislatures to adopt a penological theory and to
18 determine the length of sentences. (*Ewing, supra*, 538
19 U.S. at p. 25.) The high court noted that "[w]hen the
20 California Legislature enacted the three strikes law,
21 it made a judgment that protecting the public safety
22 requires incapacitating criminals who have already been
23 convicted of at least one serious or violent crime.
24 Nothing in the Eighth Amendment prohibits California
25 from making that choice." (*Ibid.*) Similarly, in
26 *Lockyer v. Andrade* (2003) 538 U.S. 673, 69 (*Andrade*),
27 the high court upheld the 50-year-to-life sentence
28 under the three strikes law of a recidivist defendant
convicted of shoplifting videotapes worth less than
\$153 with a prior theft conviction.

[¶] The California Legislature classified violation of
section 459 as a felony and as a third strike. ^{NEVER Proved}
Alvarez's argument that conviction of other more serious
crimes carries a lighter indicated sentence than
does a conviction of section 459 when the offense is a
defendant's third strike and therefore that appellant's
ultimate sentence is disproportionate to the crime
committed and constitutes cruel and unusual punishment,
was rejected in *Ewing* and *Andrade*. We similarly reject
the challenge and affirm the judgment. [?]

(Lodgment No. 8 at 3-6.)

The U.S. Supreme Court has upheld California's Three Strikes
law. In *Lockyer v. Andrade*, ^{538 U.S.} 538 U.S. 63 (2003), the Supreme Court
concluded that the only clearly established legal principle which
could be discerned from the Supreme Court's Eighth Amendment
jurisprudence was that "[a] gross disproportionality principle is

See, Appeal page 9, Back of Page (4) Supreme Court Justices
(COA) Found 8th Amend. Violations
Likewise, Herein, ...

1 applicable to sentences for a term of years ... the precise
2 contours of which are unclear, [and which is] applicable only in
3 the 'exceedingly rare' and 'extreme' case." Andrade, 538 U.S. at
4 72-73 (citing Harmelin v. Michigan, 501 U.S. 957, 1001 (1991)).
5 The Supreme Court then held that the California court's determi-
6 nation that Andrade's sentence of two terms of twenty-five years
7 to life under the Three Strikes Law was not contrary to this
8 clearly established principle. At the outset, the Supreme Court
9 found that the California appellate court's decision did not
10 "appl[y] a rule that contradicts the governing law set forth in
11 [Supreme Court] cases." Id. at 73 (citing Williams, supra, 529
12 U.S. at 405-406). The Court wrote:

13 Because Harmelin and Solem [v. Helm, 463 U.S. 277
14 (1983)] specifically stated that they did not overrule
15 Rummel [v. Estelle, 445 U.S. 263 (1980)], it was not
16 contrary to our clearly established law for the Cali-
17 fornia Court of Appeal to turn to Rummel in deciding
18 whether a sentence is grossly disproportionate. See
19 Harmelin, supra at 998, 111 S.Ct. 2680 (KENNEDY, J.,
concurring in part and concurring in judgment); Solem,
supra, at 288, n. 13, 303-304, n. 32, 103 S.Ct. 3001.
Indeed, Harmelin allows a state court to reasonably
rely on Rummel in determining whether a sentence is
grossly disproportionate.

20 Id.

21 In Rummel, the Supreme Court held that a sentence of life
22 imprisonment for a defendant who was convicted of obtaining
23 \$120.75 by false pretenses and who had two prior theft-related
24 convictions did not violate the Eighth Amendment because Rummel
25 would be eligible for parole in twelve years and because the
26 sentence was not solely the result of his current minor theft
27 crime, but rather, the result of Rummel's recidivism. Rummel,
28 445 U.S. at 267, 284-285. In Solem, the Court found a mandatory

1 term of life in prison, with no available parole, for writing a
2 "no account" check for \$100.00 and for having three prior convic-
3 tions violated the Eighth Amendment's proportionality require-
4 ment. Solem, 463 U.S. at 281-283.

5 Nor was Andrade's sentence "materially indistinguishable"
6 from the facts in Solem; rather, the facts fell between the facts
7 of Rummel and Solem because Andrade retained the possibility of
8 parole. Id. at 74.

9 The Supreme Court also concluded that the state
10 court did not unreasonably apply clearly established
Supreme Court law:

11 Section 2254(d)(1) permits a federal court to grant
12 habeas relief based on the application of a governing
13 legal principle to a set of facts different from those
14 of the case in which the principle was announced. See
15 e.g. Williams v. Taylor, supra at 407, 120 S.Ct. 1495
(noting that it is "an unreasonable application of this
16 Court's precedent if the state court identifies the
17 correct governing legal rule from this Court's cases
18 but unreasonably applies it to the facts of the partic-
19 ular state prisoner's case"). Here, however, the
20 governing legal principle gives legislatures broad
discretion to fashion a sentence that fits within the
scope of the proportionality principle - the "precise
contours" of which "are unclear." Harmelin v. Michi-
gan, 501 U.S. at 998, 111 S.Ct. 2680 (KENNEDY, J.,
concurring in part and concurring in judgment). And it
was not objectively unreasonable for the California
Court of Appeal to conclude that these "contours"
permitted an affirmance of Andrade's sentence.

21 Id. at 75-76.

22 Finally, the Court reiterated that "[t]he gross
23 disproportionality principle reserves a constitutional violation
24 for only the extraordinary case." Id. According to the Supreme
25 Court, Andrade's sentence of two consecutive terms of twenty-five
26 years to life in prison was not such an extraordinary case. Id.
27 at 76.

This is The Extraordinary Case

28 //

1 Applying Andrade to Petitioner's case, the Court concludes
2 that the state court's decision was neither contrary to, nor an
3 unreasonable application of, clearly established Supreme Court
4 law. As the Supreme Court noted in Andrade, the clearly estab-
5 lished legal principle is that "a gross disproportionality
6 principle is applicable to sentences for terms of years." Id. at
7 72-73. Although the state court's decision did not explicitly
8 apply this principle in its denial of Petitioner's claim, an
9 independent review of the record leads this Court to the same
10 conclusion. See Delgado, supra, 223 F.3d at 982; Himes, supra,
11 336 F.3d at 853.

12 Petitioner's criminal record is far more serious than the
13 defendants in Rummel, Solem, and Andrade. Rummel's prior convic-
14 tions were for fraudulent use of a credit card and passing a
15 forged check. Rummel, 445 U.S. at 265-266. Helm's prior convic-
16 tions were for burglary, obtaining money by false pretenses,
17 grand larceny, and driving while intoxicated. Solem, 463 U.S. at
18 279-280. Andrade's prior convictions were for misdemeanor theft
19 offenses, residential burglary, transportation of marijuana,
20 petty theft and escape from a federal prison. Andrade, 270 F.3d
21 at 765-766. In contrast, Petitioner's prior strike convictions
22 were for (a) two counts of second degree robbery (simulating the
23 use of a gun); (b) armed robbery, grand theft, and resisting
24 arrest; and (c) robbery of an elderly neighbor (with a knife) and
25 battery on a peace officer. (CT 159-165.)¹ Like the defendant

26
27 ¹Petitioner's other prior convictions were for two counts of
28 being drunk in public, theft, burglary, two counts of burglary, escape
from prison camp, auto theft, drunk driving, grand theft, grand theft,
burglary, receiving stolen property, escape from prison, being a felon
in possession of a gun and being an armed career criminal. (CT 159-

This Court is Totally
Prejudiced

No Conscience of The
Spirit of The Law.

She's Twisting The
LAW — & charging you for Past
38 + 40 years Past Unconscionable
Unconscionable / Attitude
Proverbs 28:5, (K.J.)

1 in Rummel, Petitioner's sentence of 60 years to life is not
2 solely the result of his current conviction, but of his recidi-
3 vism. See Rummel, 445 U.S. at 284-285. Thus, the state court's
4 denial of Petitioner's claim was not "contrary to" clearly
5 established Supreme Court law because Petitioner's sentence was
6 not grossly disproportionate in light of his serious and lengthy
7 criminal history. Williams, supra, 529 U.S. at 412-413.

8 Nor was the state appellate court's denial of this claim an
9 unreasonable application of clearly established Supreme Court
10 law. See 28 U.S.C. § 2254(d)(1). As in Andrade, the "governing
11 legal principle gives legislatures broad discretion to fashion a
12 sentence that fits within the scope of the proportionality
13 principle - the 'precise contours' of which 'are unclear.'"
14 Andrade, 123 U.S. at 1175 (citing Harmelin, 501 U.S. at 998.)
15 Ramirez v. Castro, 365 F.3d 755 (9th Cir. 2004) gives this Court
16 some guidance as to the kind of "exceedingly rare" case that
17 warrants federal habeas relief. In Ramirez, the Ninth Circuit
18 concluded that a sentence of twenty-five years to life for a non-
19 violent shoplifting of a \$199.00 VCR where the defendant's prior
20 convictions were two non-violent second degree robberies violated
21 the Eighth Amendment. Ramirez, 365 F.3d at 775. The Court noted
22 that Ramirez's prior robberies did not involve weapons, and that
23 the "force" involved in both was minimal. Id. at 768. Moreover,
24 the one-year jail term Ramirez received for the two robberies was
25 also indicative of the less-than-serious nature of the offense,
26 and it "was the only period of incarceration ever imposed upon
27 Ramirez prior to his Three Strikes sentence." Id. at 769.

28 _____
165.)

1 Comparing Ramirez's case to Rummel, Solem, and Andrade, the Court
2 concluded that "this [was] the extremely rare case that gives
3 rise to an inference of gross disproportionality." Id. at 770.
4 The Court held that the state court's decision to uphold
5 Ramirez's sentence was an objectively unreasonable application of
6 clearly established Supreme Court law, and that Ramirez's case
7 was one of the exceedingly rare cases entitled to habeas relief.
8 Id. at 775.

9 Petitioner's prior convictions are of a completely different
10 character from those in Ramirez. During his criminal career,
11 Petitioner has been convicted of four counts of robbery, four
12 counts of burglary, and battery on a police officer, among
13 numerous other crimes. (CT 159-165.) In 1989, Petitioner was
14 convicted of the federal charge of being a felon in possession of
15 a gun and being an "armed career criminal." He was sentenced to
16 15 years to life, but was released after serving only 12 years.
17 (CT 164.) In short, Petitioner's case is plainly not the "ex-
18 tremely rare" case which gives rise to an inference of
19 disproportionality. See Ramirez, 365 F.3d at 770.² ? LIAR)

20
21 ²The Ninth Circuit also recently decided another case applying
22 Andrade to a three strikes conviction in Reyes v. Brown, 399 F.3d 964
23 (9th Cir. 2005). There, the defendant was convicted of perjury for
24 making a false statement on a California Department of Motor Vehicles
25 driver's license application form. Reyes, 399 F.3d at 965. His prior
26 convictions were for a residential burglary, committed when he was a
27 juvenile, and an armed robbery. Id. at 966. While Reyes' age and the
28 fact that "the [burglary] appeared to be nonviolent" weighed against a
finding that his prior convictions were sufficiently "grave" to
warrant the sentence of twenty-six years to life he received, the
armed robbery "represents a point of departure from Ramirez, given the
nature of the offense and the nine year prison term to which Reyes was
sentenced." Id. Because the Court was unable to determine the
circumstances surrounding the robbery, the Court remanded the case to
the District Court "to develop the record further and to determine in
the first instance whether Reyes is entitled to relief under Ramirez."
Id. at 969-970. Here, there is sufficient evidence of Petitioner's

1 For the foregoing reasons, the Court concludes that the
2 state court's denial of Petitioner's Eighth Amendment claim was
3 neither contrary to, nor an unreasonable application of, clearly
4 established Supreme Court law. Therefore, the claim should be
5 denied. Williams, supra, 529 U.S. at 412-413.

6 **V. Recommendation**

7 After a thorough review of the record in this matter, the
8 undersigned magistrate judge finds that Petitioner has not shown
9 that he is entitled to federal habeas relief under the applicable
10 legal standards. Therefore, the undersigned magistrate judge
11 hereby recommends that the Petition be **DENIED WITH PREJUDICE** and
12 that judgment be entered accordingly.

13 This Report and Recommendation is submitted to the Honorable
14 William Q. Hayes, United States District Judge assigned to this
15 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

16 **IT IS ORDERED** that not later than July 3, 2007, any party
17 may file written objections with the Court and serve a copy on
18 all parties. The document should be captioned "Objections to
19 Report and Recommendation."

20 **IT IS FURTHER ORDERED** that any reply to the objections shall
21 be served and filed not later than July 20, 2007. The parties
22 are advised that failure to file objections within the specified
23 time may waive the right to raise those objections on appeal of

24 //

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26 //

*No Adequate Legal Access To "C" Facility -
THE LAW Library - Access Here is Totally Not
Legal - UnConstitutional!*

27
28 prior convictions to determine that he is not entitled to relief under
Ramirez.

1 the Court's order. See Turner v. Duncan, 158 F.3d 449, 455 (9th
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 **IT IS SO ORDERED.**

4 DATED: June 4, 2007

5 
6 Jan M. Adler
7 U.S. Magistrate Judge
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CLERK, UNITED STATES COURTHOUSE
Northern District,

450 Golden Gate Avenue,

San Francisco, California

#94102 / 9680

July 7th, 2007

Re:- Mailed My MOTION TO Proceed In Forma Pauperis :-
To Trust Officer, TRUST OFFICE On July 9, 2007)

Dear Court Clerk

: -

It's Difficult To get the Staff (CESP) C-Facility
To Do The Right Thing - E.g., They sent (THOMAS E's)
Motion To Proceed In FORMA PAUPERIS' Unsigned & sent it
to This Court? They just Drew A Line where The Signature
was Required & mailed it?? Deliberate...

At Any Rate, We want The Court To know - We
Are Doing All The Correct Procedures. We sent self-
Addressed Envelope (A Return To Court) Envelope with
Our MOTION TO PROCEED In FORMA PAUPERIS TO Trust

Office - Addressed TO Trust Officer - Hopefully They
will do Their Job and Fill out last (2) Two Pages; &
Mail it (A.S.A.P.) TO This Court. RESPECTFULLY SUBMITTED,

July 8th, 2007

/s/ Anthony Alvarez
ANTHONY ALVAREZ,
V-12145) C-Facility, C-3-111-2
CENTINELA STATE PRISON
#92251)

In Pro Per,

RICHARD W. WIEKING, CLERK,
UNITED STATES DISTRICT COURT,

(Northern District):-

450 Golden Gate Avenue,

Post Office Box-36060.)

SAN FRANCISCO, CALIFORNIA

#94102

FILED

07 AUG 15 PM 3:41

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

August 11th, 2007

Re:- (Enclosed) Appears To Be Your Court Copy - Required
In My Instant Case - For Certificate Of Appealability (COA).
Trust Officer Should Have Sent You The Correct Form To Proceed
In FORM PAUPERIS (Case No. COT-3667.) MMC (PR).

✓ Dear Court Clerk, RICHARD W. WIEKING : WFF

On Aug. 6th, 2007) - I mailed The Correct Form To
Trust Officer Here, He should fill it out - The last
Page and mail it to you - Your Envelope Supplied. !

However, The Clerks in All Courts should realize
(+ Acknowledgement) This Prison (CESP) Does Not Make The
Required Copies for (ANY) Appeals, nor, Habeas Corpus.

Appeals in This Court Require Original 44 Copies !

- This LAW Library will only make One-Copy-Period.

THEREFORE, We Believe When you sent This
(Court Copy) with Motion In Forma Pauperis. - WE
Should Have Returned Both - Received for
THE RECORD - My Case Has (4) Documents.)

(1)

See p. 2.)

Page 2, Cont.) :-

THEREFORE, (enclosed) is my Court Copy -
My genuine Request for "CERTIFICATE OF -
APPEALABILITY" - Consists of (4) Four LEGAL
DOCUMENTS - You Have Three - You do Need
Your COURT COPY - FOR MY RECORDS.

Be Advised, These are ALL EXTRA-
ORDINARY' - Conditions & Circumstances -
FOR ORIGINAL Habeas Corpus JURISDICTION!!

DATED: Aug. , 2007)

RESPECTFULLY SUBMITTED,

Enclosure:-

H Anthony Alvarez

ANTHONY ALVAREZ,

V-12145) C-Facility, C-5-127-L)

CENTINELA STATE PRISON.

P.O. Box - 921.)

Imperial, Calif. #9225)

In Pro Per. _____

* Material-EVIDENCE *

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : 7/10/07

To : A. Alvarez
V12145
C3-1114C-5
127

Subject: FEDERAL / STATE COURT FILING

In response to your inquiry regarding your court certified documents, we can only supply you with the date and time that the forms were sent from the Accounting Office to the Mailroom for mailing.

DATE: 7/10/07

TIME: 9:00 am.

If you have any questions, you will need to contact your Counselor.

SHEILA DAWSON
Accountant I Supervisor

The Trust office should have sent you a copy of my account 2020 MONEY'S Received during last 6 months. I requested this information in early July - they should have been sent to you, (CLERK)

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : 8/7/07

To : V12145
Alvarez, A
CS 8127cSubject: **FEDERAL / STATE COURT FILING**

In response to your inquiry regarding your court certified documents, we can only supply you with the date and time that the forms were sent from the Accounting Office to the Mailroom for mailing.

DATE: 8/7/07

TIME: 9:10 a.m.

If you have any questions, you will need to contact your Counselor.

SHEILA DAWSON
Accountant I Supervisor

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wieking
Clerk

General Court Number
415.522.2000

July 18, 2007

RE: CV 07-03667 MMC

VICTOR M. ALMAGER -v- BILL LOCKYER

Dear Law Clerk:

The petitioner in the instant habeas corpus action has filed a notice of appeal. Rule 22(b) of the Federal Rules of Appellate Procedure provides that if an appeal is taken by the petitioner in a habeas corpus action, the district judge who rendered the judgment shall either issue a certificate of appealability (formerly referred to as certificate of probable cause) pursuant to 28 U.S.C. § 2253 or state the reasons why such a certificate should not issue. Please make sure that the Judge issues the requisite certificate or statement so that I can process the appeal and forward the file to the Ninth Circuit.

Thank you,



Alfred Amistoso

Case Systems Administrator

JS44

(Rev. 07/89)

CIVIL COVER SHEET

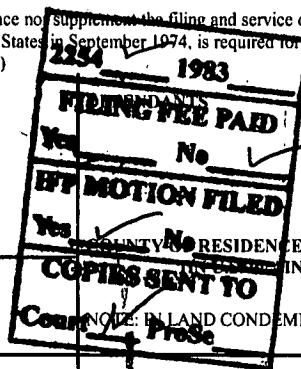
The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Anthony Alvarez

VM Almager, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)



FILED
28 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Anthony Alvarez
PO Box 921
Imperial, CA 92251
V-12145

'07CV 2062 H JMA

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
- Citizen of Another State Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☒ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/26/2007

SIGNATURE OF ATTORNEY OF RECORD

[Signature]